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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 7, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 77, No. 6
Tuesday, January 10, 2012

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0119]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/Federal Emergency Management Agency—012 Suspicious Activity Reporting System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt a newly established system of records titled, ''Department of Homeland Security/Federal Emergency Management Agency—012 Suspicious Activity Reporting System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/Federal Emergency Management Agency—012 Suspicious Activity Reporting System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective January 10, 2012.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Eric M. Leckey, (202) 646–3323), Privacy Officer, Federal Emergency Management Agency, Washington, DC 20478. For privacy issues please contact: Mary Ellen Callahan (703) 235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 76 FR 60387, September 29, 2011, proposing to exempt a system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/FEMA—012 Suspicious Activity Reporting System of Records. The DHS/FEMA—012 Suspicious Activity Reporting system of records notice (SORN) was published concurrently in the **Federal Register**, 76 FR 60067, September 28, 2011, and comments were invited on both the NPRM and SORN.

Public Comments

DHS/FEMA received a total of two public comments. One comment was received on the NPRM and one on the SORN.

NPRM

DHS/FEMA received one public comment from an anonymous individual in support of the NPRM. The private individual notes that ''the DHS/FEMA's new system of records should be exempt from the public disclosure component of the Privacy Act to further ensure national security and to add a necessary exemption to an act that seeks to protect individuals through information control.'' The private individual further stated ''this proposed rule shouldn't be seen as undermining an individual's right to disclosure of information that involves them, but rather a necessary exemption to ensure national safety * * *. The proposed rule justifiably exempts the DHS/FEMA from disclosure in order to achieve national security goals that will protect citizens from growing homeland threats.''

SORN

DHS/FEMA received one public comment on the SORN from an anonymous individual who noted ''the Notice for the Department of Homeland Security/Federal Emergency Management Agency—012 Suspicious Activity Reporting System of Records should reflect that the effort is part of the larger, federal-wide Nationwide Suspicious Activity Reporting Initiative and that SARs are reported in accordance with ISE SAR Functional Standard 1.5.'' The drafting of the SORN was intended to be broad enough to allow for changes and fluctuation in the Nationwide SAR Initiative as well as implementation at DHS and FEMA. Plans are underway to centralize reporting within DHS of all suspicious activity that meets the Information Sharing Environment (ISE) Functional Standard. Once those plans are put into place, FEMA Office of the Chief Security Officer (OSCO) special agents and/or analysts will enter all vetted SARs into the DHS ISE SAR Vetting Tool (SVT) instead of the FBI e-Guardian system, as stated in the DHS/FEMA/PIA–018 Suspicious Activity Reporting (SAR) Privacy Impact Assessment (PIA) published on September 9, 2011.

After consideration of public comments, the Department decided to remove reference to protection of the president and will implement the rulemaking as described below.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS/FEMA amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to part 5, the following new paragraph ''67'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

67. The DHS/FEMA–012 Suspicious Activity Reporting System of Records consists of electronic and paper records and will be used by DHS/FEMA and its components. The DHS/FEMA—012 Suspicious Activity Reporting System of Records is a repository of information held by DHS/FEMA to serve its mission to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to,

recover from, and mitigate all hazards. This system also supports certain other DHS/FEMA programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/FEMA–012 Suspicious Activity Reporting System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS/FEMA and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2); (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS/FEMA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS/FEMA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS/FEMA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: December 20, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–255 Filed 1–9–12; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 96, and 98

[Docket No. APHIS–2009–0035]

RIN 0579–AD05

Lists of Regions Classified With Respect to Certain Animal Diseases and States Approved To Receive Certain Imported Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing lists of regions classified with respect to certain animal diseases and pests, and lists of States approved to receive horses imported from foreign regions where contagious equine metritis (CEM) exists, from our animal and animal product import regulations. Instead, the lists will be posted on the Animal and Plant Health Inspection Service's (APHIS') Web site. The regulations will provide the Web address and explain APHIS' criteria and processes for adding a region or a State to, or removing a region or State from, each of the lists. Because the lists will no longer be in the Code of Federal Regulations, changing the lists will no longer require rulemaking. We will keep the public informed of changes to the lists and provide opportunity for public comment through publications in the **Federal Register**. This rule will enable APHIS to more quickly recognize changes in the disease or pest status of foreign regions and approve States to receive horses from foreign regions where CEM exists. This rulemaking does not change the technical criteria APHIS uses to evaluate whether a foreign region should be added to or removed from a list or the criteria for approving a State to receive horses imported from foreign regions where CEM exists.

DATES: *Effective Date:* February 9, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Laurel Voelker, Regional Evaluation Services—Import, National Center for Import and Export, VS, APHIS, 920 Main Campus Drive, Suite 150, Raleigh, NC 27606; (919) 855–7736.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation into the United States of certain animals and animal products in order to prevent the introduction of specified livestock diseases into the United States. The Animal and Plant Health Inspection Service (APHIS) has, in the past, listed in part 94 regions affected with or free of various diseases of livestock. APHIS has also listed in part 94 countries in Europe that are part of the APHIS-defined region of Europe that we recognize as low risk for classical swine fever (CSF). The regulations in 9 CFR part 93 govern the importation of animals into the United States. Part 93 has listed regions affected with certain diseases of livestock and regions where screwworm is considered to exist. Part 93 has also listed States that are approved by APHIS to receive stallions or mares over 731 days of age that are imported under specified conditions from regions affected with contagious equine metritis (CEM). The regulations in 9 CFR part 98 govern the importation into the United States of animal embryos and semen. Part 98 has listed the countries in Europe that are part of the APHIS-defined region of Europe that we recognize as low risk for CSF. Each time we have added or removed a country or other region to or from a list in any of these regulations, we have had to engage in rulemaking in order to change the Code of Federal Regulations.

On June 1, 2011, we published a proposed rule in the **Federal Register** (Docket No. APHIS–2009–0035, 76 FR 31499–31507) to remove the lists of States approved to receive stallions or mares from regions affected with CEM, the lists of countries in the APHIS-defined European CSF region, and most of the other lists of regions from parts 93, 94, and 98 and instead post them to APHIS' Web site. We proposed to include in the regulations the Web address for the lists; a contact for requesting copies of the lists by mail, fax, or email; and APHIS' process for

adding or removing a State or foreign region to or from the lists. We did not propose to change the technical criteria APHIS uses to evaluate whether a foreign region should be added to or removed from a list, or the conditions States must meet in order to be approved to receive stallions or mares from regions affected with CEM.

Because the lists would no longer be in the Code of Federal Regulations, changes to the lists would no longer have to be made through rulemaking. We proposed to keep the public informed and provide opportunity for public comment on changes to the lists through notices published in the **Federal Register**. The proposed action was intended to allow more timely changes to the lists, while continuing to provide opportunity for public comment.

We solicited comments concerning our proposal for 60 days ending August 1, 2011. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. In the past, rulemaking has been required to amend the Code of Federal Regulations to change the disease or pest status of a region. The basis for such a change is either an outbreak of a disease or pest in a foreign region that results in a downgrade in status or an evaluation by APHIS that provides a basis for an upgrade in status. This final rule will remove the need for rulemaking to change the disease or pest status of a foreign region, while still providing opportunity for public comment on the basis for the action. We are not changing our criteria for recognizing a region as free of or affected with a disease or pest, or for adding or removing any country or other region to or from the lists. Similarly, rulemaking has been required whenever APHIS has approved a State to receive stallions or mares over 731 days of age from regions where CEM exists. This final rule will remove the need for rulemaking while still providing opportunity for public comment on the basis for the action. We are not changing our criteria for approving a State to receive stallions or mares from CEM-affected regions. This final rule will enable APHIS to more quickly approve States to receive horses from CEM-affected regions and recognize changes in the disease or pest status of foreign regions.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are amending 9 CFR parts 92, 93, 94, 96, and 98 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 92.2 is amended as follows:

■ a. In paragraph (d), by removing the word ''rulemaking''; and

■ b. By revising paragraphs (e) and (f) to read as follows:

§ 92.2 Application for recognition of the animal health status of a region.

* * * * *

(e) If, after review and evaluation of the information submitted, APHIS believes the request can be safely granted, APHIS will indicate its intent and make its evaluation available for public comment through a document published in the **Federal Register**.

(f) APHIS will provide a period of time during which the public may comment on its evaluation. During the comment period, the public will have access to the information upon which APHIS based its evaluation, as well as the evaluation itself. Once APHIS has reviewed all comments received, it will make a final determination regarding the request and will publish that determination in the **Federal Register**.

* * * * *

■ 3. Section 92.4 is revised to read as follows:

§ 92.4 Reestablishment of a region's disease-free status.

This section applies to regions that are designated under this subchapter as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region recognized as free of a specified animal disease in this subchapter experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from that region. The prohibitions or restrictions may be imposed on only a portion of the region previously recognized as free of a disease. In these cases, APHIS will inform the public as soon as possible through notice in the **Federal Register** of the basis for its decision to prohibit or restrict imports from the smaller area of that region previously recognized as free.

(b) *Reassessment of the disease situation.* (1) Following removal of disease-free status from all or part of a region, APHIS may reassess the disease situation in that region to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing a region's disease status, APHIS will take into consideration the standards of the World Organization for Animal Health (OIE) for reinstatement of disease-free status, as well as all relevant information obtained through public comments or collected by or

submitted to APHIS through other means.

(2) Prior to taking any action to relieve prohibitions or restrictions, APHIS will make information regarding its reassessment of the region's disease status available to the public for comment. APHIS will announce the availability of this information in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section, including comments regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a notice of its decision to reinstate the disease-free status of the region, or a portion of the region;

(2) Publish a notice of its decision to continue the prohibitions or restrictions on the imports of animals and animal products from that region; or

(3) Publish another document in the **Federal Register** for comment.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 4. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 5. Section 93.301 is amended as follows:

■ a. By revising paragraphs (c)(1), (h)(6), (h)(7), and (j) introductory text; and

■ b. In paragraphs (c)(2)(ix), (d)(3), (e)(1) introductory text, (e)(2)(i), (f)(10)(i), (g) introductory text, and (h) introductory text, by removing the words ''listed in'' each time they appear and adding in their place the words ''listed under''.

The revisions read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(1) *Importation prohibited.* Except as provided in paragraph (c)(2) of this section, notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses from any region that APHIS considers to be affected with contagious equine metritis (CEM) and the importation of all horses that have been in any such region within the 12 months immediately preceding their being offered for entry into the United States is prohibited.

(i) A list of regions that APHIS considers to be affected with CEM is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that the region trades horses freely with a region in which CEM exists without testing for CEM. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that the disease is not present in the region. In the case of a region formerly not on this list that is added due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

(h) * * *

(6) A list of States approved by APHIS to receive stallions over 731 days of age imported under paragraph (e) of this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/downloads/states_app_conduct_cem_testing.pdf*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(7) A list of States approved by APHIS to receive mares over 731 days of age imported under paragraph (e) of this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/downloads/states_app_conduct_cem_testing.pdf*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

* * * * *

(j) *Examination and treatment for screwworm.* Horses from regions where APHIS considers screwworm to exist may be imported into the United States only if they meet the requirements in paragraphs (j)(1) through (7) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

■ 6. In § 93.308, paragraphs (a)(1) and (2) are revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(1) Except as provided in §§ 93.317 and 93.324 and in paragraph (a)(1)(i) of this section, horses intended for importation from the Western Hemisphere shall be quarantined at a port designated in § 93.303 for not less than 7 days to be evaluated for signs of Venezuelan equine encephalomyelitis.

(i) Horses imported from regions of the Western Hemisphere that APHIS considers to be free of Venezuelan equine encephalomyelitis are exempt from the requirements of paragraph (a)(1) of this section. A list of regions that APHIS has declared free of Venezuelan equine encephalomyelitis is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_import/equine/equine_import_quarantine.shtml*. Copies of the list will also be available

via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list of those it has declared free of Venezuelan equine encephalomyelitis after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of Venezuelan equine encephalomyelitis upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

(2) Horses intended for importation from regions APHIS considers to be affected with African horse sickness may enter the United States only at the port of New York, and must be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days. This restriction also applies to horses that have stopped in or transited a region considered affected with African horse sickness.

(i) A list of regions that APHIS considers affected with African horse sickness is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that the disease is not present in the region. In the case of a region formerly not on this list that is added due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

■ 7. In § 93.405, paragraph (a)(3) introductory text is revised to read as follows:

§ 93.405 Health certificate for ruminants.

(a) * * *

(3) If the ruminants are from any region where screwworm is considered to exist, the ruminants may be imported into the United States only if they meet the requirements of paragraphs (a)(3)(i) through (iv) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

§ 93.500 [Amended]

■ 8. Section 93.500 is amended by removing the definition of *APHIS-defined European CSF region.*

■ 9. Section 93.505 is amended as follows:

■ a. In paragraph (a), by adding the words ''as defined in § 94.0 of this subchapter,'' immediately after the words ''APHIS-defined European CSF region,''; and

■ b. In paragraph (b), by revising the introductory text to read as follows:

§ 93.505 Certificate for swine.

* * * * *

(b) Swine from any region where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (b)(1) through (b)(4) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

■ 10. In § 93.600, paragraph (a) introductory text is revised to read as follows:

§ 93.600 Importation of dogs.

(a) *All dogs.* Dogs from any region of the world where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (a)(1) and (2) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS

receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 11. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 12. Section 94.0 is amended by revising the definition of *APHIS-defined European CSF region* to read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined European CSF region. A single region of Europe recognized by APHIS as low risk for classical swine fever.

(1) A list of areas included in the region is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add an area to the region after it conducts an evaluation of the area to be added in accordance with § 92.2 of this subchapter and finds that the risk profile for the area is equivalent with respect to classical swine fever to the risk profile for the region it is joining.

* * * * *

■ 13. In § 94.1, paragraph (a) is revised to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) APHIS considers rinderpest or foot-and-mouth disease to exist in all regions of the world except those declared free of one or both of these diseases by APHIS.

(1) A list of regions that APHIS has declared free of rinderpest and a list of regions APHIS has declared free of foot and mouth disease are maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of rinderpest or foot-and-mouth disease, or both, after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease, or diseases, are not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of rinderpest or foot-and-mouth disease upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

§ 94.2 [Amended]

■ 14. Section 94.2 is amended by removing the word ''infected'' each time it appears and adding in its place the word ''affected''.

■ 15. Section 94.8 is amended as follows:

■ a. By redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively; and

■ b. By removing the introductory text, including footnote 8, and adding a new paragraph (a);

■ c. In redesignated paragraphs (b)(3)(i) and (b)(4) introductory text, by removing the paragraph designation ''(a)(5)'' and adding in its place the paragraph designation ''(b)(5)'';

■ d. In redesignated paragraph (b)(5) introductory text, by redesignating footnote 9 as footnote 8; and

■ e. In redesignated paragraph (c), by removing the paragraph designation ''(a)(2)'' and adding in its place the paragraph designation ''(b)(2)''.

The addition reads as follows:

§ 94.8 Pork and pork products from regions where African swine fever exists or is reasonably believed to exist.

(a) African swine fever exists or the Administrator has reason to believe that African swine fever exists in the regions listed under paragraph (a)(2) of this section.

(1) The Administrator bases the reason to believe African swine fever exists in a region on the following factors:

(i) When a region allows the importation of host animals, pork or pork products, or vectors of African swine fever from a region in which African swine fever exists under conditions which the Administrator has determined are less stringent than those prescribed by this chapter for importing host animals, pork or pork products, or vectors of African swine fever into the United States from a region in which African swine fever exists; or

(ii) When a region allows the importation or use of African swine fever virus or cultures under conditions which the Administrator has determined are less stringent than those prescribed by this chapter for the importation or use of African swine fever virus or cultures into or within the United States; or

(iii) When a region has a contiguous border with, or is subject to commercial exchange or natural spread of African swine fever host animals, host materials, or vectors with, another region with known outbreaks of African swine fever; or

(iv) A region's lack of a disease detection, control, or reporting system capable of detecting or controlling African swine fever and reporting it to the United States in time to allow the United States to take appropriate action to prevent the introduction of African swine fever into the United States; or

(v) Any other fact or circumstance found to exist which constitutes a risk of introduction of African swine fever into the United States.

(2) A list of regions where African swine fever exists or the Administrator has reason to believe that African swine fever exists is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. Copies of the list will also be available via postal

mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that the disease is not present and that there is no reason to believe the disease is present. In the case of a region formerly not on this list that is added due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

■ 16. Section 94.9 is amended as follows:

■ a. By removing footnote 10 in paragraph (a) and redesignating footnote 11 in paragraph (c)(3) and footnote 12 in paragraph (e)(2) introductory text as footnotes 10 and 11, respectively;

■ b. By revising paragraph (a);

■ c. By adding a new footnote 9 at the end of paragraph (c) introductory text; and

■ d. In paragraphs (c)(1)(iii)(C)(*1*) and (*2*), by removing the words ''in paragraph (a)'' and adding in their place the words ''under paragraph (a)''.

The revision and addition read as follows:

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) APHIS considers classical swine fever to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of classical swine fever after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of classical swine fever upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

(c) * * * [9]

[9] See also other provisions of this part and parts 93, 95, and 96 of this chapter, and part 327 of this title, for other prohibitions and restrictions upon the importation of swine and swine products.

* * * * *

■ 17. In § 94.10, paragraph (a) is revised to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) APHIS considers classical swine fever to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of classical swine fever after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of classical swine fever upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

■ 18. Section 94.11 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (c) introductory text, by removing the words ''regions designated in paragraph (a)'' and adding in their place the words ''any region listed under paragraph (a)(2)'';

■ c. In paragraph (c)(1), by removing the words ''listed in § 94.1(a) as a region infected with rinderpest or foot-and-mouth disease'' and adding in their place the words ''designated under § 94.1(a) as a region where rinderpest or foot-and-mouth disease exists'';

■ d. In paragraph (c)(2), by removing the word ''infected'' each time it appears and adding in its place the word ''affected''; and

■ e. In paragraph (c)(3), by removing the words ''in § 94.1(a)(2)'' and adding in their place the words ''under § 94.1(a)''.

The revision reads as follows:

§ 94.11 Restrictions on importation of meat and other animal products from specified regions.

(a) The meat of ruminants or swine, and other animal products, and ship stores, airplane meals, and baggage containing such meat or animal products originating in any region listed as provided in paragraph (a)(2) of this section may not be imported into the United States unless the requirements in this section, in addition to other applicable requirements of chapter III of this title, are met. However, meat and meat products that meet the requirements of § 94.4 do not have to comply with the requirements of this section. As used in this section, the term ''other animal product'' means all parts of the carcass of any ruminant or swine, other than meat and articles regulated under part 95 or part 96 of this chapter.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of rinderpest and foot-and-mouth disease by APHIS as provided in § 94.1(a) but supplement their national meat supply by the importation of fresh (chilled or frozen) meat of ruminants or swine from regions that APHIS considers to be affected with rinderpest or foot-and-mouth disease as provided in § 94.1(a); or have a common land border with regions considered to be affected with rinderpest or foot-and-mouth disease; or import ruminants or swine from regions considered to be affected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for

importation into the United States. Thus, the meat may be commingled with the fresh (chilled or frozen) meat of animals from an affected region, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States.

(2) A list of regions whose products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances described in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that rinderpest or foot-and-mouth disease exists in the region.

* * * * *

■ 19. Section 94.12 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b)(1)(iii)(B), by redesignating footnote 13 as footnote 12;

■ c. In paragraph (b)(1)(iv)(B)(*1*), by removing the word ''infected'' and adding in its place the word ''affected''; and by removing the words ''in paragraph (a)'' and adding in their place the words ''under paragraph (a)(1)'';

■ d. In paragraph (b)(1)(iv)(B)(*2*)(*i*), by removing the word ''infected'' and adding in its place the word ''affected'';

■ e. In paragraph (b)(1)(iv)(B)(*2*)(*ii*), by removing the words ''in paragraph (a)'' and adding in their place the words ''under paragraph (a)(1)'';

■ f. In paragraph (b)(3), by redesignating footnote 14 as footnote 13; and

■ g. By revising redesignated footnote 13 in paragraph (b)(3) to read '' [13] See footnote 10.''

The revision reads as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) APHIS considers swine vesicular disease to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of swine vesicular disease is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of swine vesicular disease after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of swine vesicular disease upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

■ 20. Section 94.13 is amended as follows:

■ a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ b. By redesignating the introductory text as paragraph (a) and revising it;

■ c. By revising newly redesignated paragraph (c)(1); and

■ d. In newly redesignated paragraph (c)(2), by removing the words ''in § 94.12'' and adding in their place the words ''under § 94.12(a)''.

The revisions read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

(a) Pork or pork products and ship's stores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under part 95 or part 96 of this chapter, produced in any region listed under paragraph (a)(2) of this section may not be imported into the United States unless the requirements of this section, in addition to other applicable requirements of part 327 of this title, are met.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of swine vesicular disease as provided in § 94.12(a) but supplement their national pork supply by the importation of fresh (chilled or frozen) meat of animals from regions where swine vesicular disease is considered to exist, or have a common border with such regions, or have trade practices that are less restrictive than are acceptable to the United States. Thus, the pork or pork products may be commingled with fresh (chilled or frozen) meat of animals from a region where swine vesicular disease is considered to exist, resulting in an undue risk of swine vesicular disease introduction into the United States.

(2) A list of regions whose products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances listed in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that swine vesicular disease exists in the region.

* * * * *

(c) * * *

(1) The slaughtering establishment is not permitted to receive animals that originated in a region considered to have swine vesicular disease or that have ever been in a region in which swine vesicular disease existed.

* * * * *

§ 94.14 [Amended]

■ 21. In § 94.14, paragraph (a) is amended by removing the words ''listed in'' and adding in their place the words ''listed under''.

■ 22. Section 94.16 is amended as follows:

■ a. By revising paragraph (b) introductory text;

■ b. In paragraph (b)(2), by redesignating footnote 15 as footnote 14; and

■ c. By revising paragraph (c) introductory text and paragraph (d).

The revisions read as follows:

§ 94.16 Milk and milk products.

* * * * *

(b) Milk and milk products originating in, or shipped from, any region where rinderpest or foot-and-mouth disease is considered to exist under § 94.1(a) may be imported into the United States if they meet the requirements of paragraphs (b)(1), (2), or (3) of this section:

* * * * *

(c) Milk and milk products originating in and shipped from regions listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease but which have entered a port or otherwise transited a region where APHIS considers either disease to exist may not be imported into the United States unless:

* * * * *

(d) Except for milk and milk products imported from Canada, and except as provided in this paragraph, milk or milk products imported from a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the region of export. The certificate must state that the milk was produced and processed in a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease, or that the milk product was processed in one such region from milk produced in another such region. The certificate must name the region in which the milk was produced and the region in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in a region in which rinderpest or foot-and-mouth disease exists. Milk or milk products from a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease and that were processed in whole or in part from milk or milk products from a region not listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease may be imported into the United States only in accordance with paragraph (b)(3) of this section.

* * * * *

§ 94.17 [Amended]

■ 23. Section 94.17 is amended as follows:

■ a. Footnote 16 in paragraph (e) and footnote 17 in paragraph (p)(1)(i) are redesignated as footnotes 15 and 16, respectively; and

■ b. Newly redesignated footnote 16 in paragraph (p)(1)(i) is revised to read ''[16] See footnote 15.''

§ 94.18 [Amended]

■ 24. In § 94.18, footnote 18 in paragraph (c)(2) and footnote 19 in paragraph (d)(1) are redesignated as footnotes 17 and 18, respectively.

§ 94.24 [Amended]

■ 25. Section 94.24 is amended as follows:

■ a. In paragraphs (a)(1)(i) and (b)(2)(i), by removing the words ''in §§ 94.9(a) and 94.10(a) as one'' each time they occur and adding in their place the words ''under §§ 94.9(a) and 94.10(a) as a region'';

■ b. In paragraph (a)(5), by redesignating footnote 20 as footnote 19; and

■ c. In paragraph (b)(6) by redesignating footnote 21 as footnote 20.

■ 26. Section 94.25 is amended as follows:

■ a. By removing the introductory text;

■ b. By revising paragraph (a);

■ c. In paragraph (b) introductory text, paragraph (c) introductory text, and paragraphs (c)(1) and (c)(5), by removing the words ''designated in'' each time they occur and by adding in their place the words ''listed under''; and

■ d. In paragraphs (b)(1), (b)(2), (b)(3), (c)(2), (c)(3), and (c)(4), by removing the words ''designated in §§ 94.9 and 94.10 as affected with CSF'' each time they occur and adding in their place the words ''classified under §§ 94.9 and 94.10 as a region in which CSF is known to exist''.

The revision reads as follows:

§ 94.25 Restrictions on the importation of live swine, pork, or pork products from certain regions free of classical swine fever.

(a) Live swine, pork, or pork products and ship stores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under part 95 or part 96 of this chapter, may not be imported into the United States from a region listed under paragraph (a)(2) of this section unless the requirements in this section, in addition to other applicable requirements of part 93 of this chapter and part 327 of this title, are met.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of classical swine fever (CSF) by APHIS in accordance with §§ 94.9(a) and 94.10(a) but either supplement their pork supplies with fresh (chilled or frozen) pork imported from regions considered to be affected by CSF, or supplement their pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements of this part, or share a common land border with CSF-affected regions, or import live swine from CSF-affected regions under conditions less restrictive than would be acceptable for importation into the United States. Thus, the live swine, pork, or pork products from those regions may be commingled with live swine, pork, or pork products from CSF-affected regions, resulting in a risk of CSF introduction into the United States.

(2) A list of regions whose live swine, pork, and pork products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose live swine, pork, and pork products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances described in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that classical swine fever exists in the region.

* * * * *

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

■ 27. The authority citation for part 96 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

§ 96.2 [Amended]

■ 28. Section § 96.2 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words ''in § 94.8'' and adding in their place the words ''under § 94.8(a)'';

■ b. In paragraph (a)(1), by removing the words ''in § 94.8(a)'' and adding in their place the words ''under § 94.8(a)'';

■ c. In paragraph (a)(2), by removing the words ''in § 94.8'' and adding in their place the words ''under § 94.8(a)''; and

■ d. In paragraph (a)(5), by removing the words ''in § 94.8'' each time they appear and adding in their place the words ''under § 94.8(a)''.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

■ 29. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.3 [Amended]

■ 30. In § 98.3, the introductory text is amended by removing the words ''listed in § 94.1(a)(2)'' and adding in their place ''listed under § 94.1(a)''.

§ 98.30 [Amended]

■ 31. Section 98.30 is amended by removing the definition of *APHIS-defined European CSF region.*

§ 98.38 [Amended]

■ 32. Section 98.38 is amended as follows:

■ a. In the introductory text, by adding the words '', as defined in § 94.0 of this subchapter,'' immediately after the words ''APHIS-defined EU CSF region''; and

■ b. In paragraph (b)(1), by removing the words ''in §§ 94.9(a) and 94.10(a) of this chapter as one'' and adding in their place the words ''under §§ 94.9(a) and 94.10(a) of this chapter as a region''.

Done in Washington, DC, this 4th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–226 Filed 1–9–12; 8:45 am]

BILLING CODE 3410–34–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 228

RIN 0412–AA70

Procurement of Commodities and Services Financed by USAID Federal Program Funds.

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This Final Rule revises USAID regulations to simplify implementation of the statutory requirement that Federal assistance, or program, funds made available by the United States Congress (Congress) to USAID under the authority of the Foreign Assistance Act of 1961, as amended (FAA), be used for procurement in the United States (U.S.), the recipient country, or developing countries. It does so by revising USAID's current source, origin and nationality (S/O/N) regulation to track more closely the statutory procurement authority provided under the FAA and referenced above by establishing a new code for procurements from the U.S., recipient country and developing countries as well as reflecting existing, special procurement authorities established by Congress; deleting the concept of ''origin,'' and simplifying the concepts of ''source'' and ''nationality'' to reflect better Congress's directive to procure from the U.S., recipient or developing countries; and simplifying application of the statutory waiver authority in the FAA.

DATES: *Effective:* February 6th, 2012.

FOR FURTHER INFORMATION CONTACT: John Niemeyer (or designee), Attorney Advisor, Office of the General Counsel, USAID, Rm. 6.07–105, 1300 Pennsylvania Ave. NW., Washington, DC 20523; telephone: (202) 712–5053 (this is not a toll-free number); *jniemeyer@usaid.gov.*

SUPPLEMENTARY INFORMATION:

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On August 19, 2011, USAID published in the **Federal Register** (76 FR 51916) a Proposed Rule which substantially modified the current S/O/N regulation by establishing a single primary geographic (source) code, deleting the concept of ''origin'' from the rule, requiring recipients and contractors to document ''availability for purchase'' of commodities and services, and streamlining existing waiver procedures. The Agency provided a forty five day public comment period on the Proposed Rule, which ended Monday, October 3rd, 2011. The Agency also offered the public the opportunity to submit comments by surface mail, email or fax.

The publication of the Proposed Rule was the second step in a three step, public ''notice and comment'' rulemaking procedure. Previously on February 16, 2011, USAID published an ''Advanced Notice of Proposed Rulemaking'' (ANPRM) in the **Federal Register** (76 FR 8961), proposing changes to the current regulation, soliciting suggestions and comments for such changes, and providing a forty five day comment period, which ended April 4, 2011. Comments received in response to the ANPRM were discussed and reflected in the publication of the Proposed Rule. USAID's discussion of the comments received in response to the Proposed Rule, below at part III, and reflection of those comments in this ''Final Rule,'' completes the public notice and comment rulemaking process. USAID also consulted with the relevant Congressional committees concerning revisions to the regulation.

USAID received sixteen public comments in response to the Proposed Rule, all strongly in favor of substantial simplification of the regulation to keep pace with the globalization of the economy. Comments also urged revision of the proposed requirement for documentation of multiple, yearly sales as part of the definition of ''available for purchase;'' revisions to the ''nationality'' proposed requirements to allow eligibility of foreign-owned (non-governmental) development organizations employing a majority of U.S. or developing country staff ; and clarification of the waiver requirements. Comments received in response to the Proposed Rule are discussed and addressed in greater detail, below in part III, Responses to Comments Received on the Proposed Rule.

I. Background

Historically, the initial version of Section 604(a) provided that federal program funds made available under the FAA could be used for procurement outside the United States only if the President made a determination that such procurement would not have adverse effects upon the economy of the U.S., or that any such harm was outweighed by the benefits of ''less costly government procurement outside the United States.'' USAID implemented this directive by adapting the concepts of ''source, origin and nationality'' developed under USAID's commodity import program (CIP),[1] to all program funded procurements under the FAA. USAID also adapted the ''principal geographic codes'' [2] developed under the CIP to apply to all USAID financed, Federal program funded procurements, in part in order to address Congress's

[1] A CIP is a program in which USAID provides foreign exchange to a host country that, by the terms of the applicable agreement between USAID and the host country, is used to finance particular commodity import transactions of the host country.

[2] Geographic codes were established to note, for every implementing agreement, the source, origin and nationality authorized for every good and service procurement transaction under that implementing agreement.

concern that U.S. taxpayer funded foreign assistance not provide any direct benefits to the governments of communist countries during the Cold War. The practical result of these decisions was that all program funded procurement transactions financed by USAID were restricted to the source, origin and nationality geographic code specified for the implementing agreement.

In 1993, Congress amended the FAA procurement authorities in Section 604(a) to provide that federal program funds made available to USAID may be used for procurement from the U.S., the recipient country,[3] or developing countries (but not advanced developing countries).[4] However, USAID did not change its procurement regulations to reflect the change in statutory procurement authorities, but instead self-imposed a policy to continue to follow the same limits on procurement in the recipient and developing countries as if the 1993 statutory amendments had not occurred. The concepts of source, origin and nationality were maintained in USAID's procurement regulations at 22 CFR part 228, as were the principal geographic codes, none of which captured in any single code Congress's clear 1993 directive to procure from the U.S., recipient country, or developing countries.

Because of the end of the Cold War and the subsequent globalization of the economy, this approach has become increasingly difficult to administer and, in some respects, obsolete. The costs of compliance with the complex regulation, and of the self-imposed and unnecessary restrictions on procurement in recipient and developing countries means that the foreign assistance dollar does not go as far as it would with a more straightforward regulation that reflects the statutory authority to procure in the recipient country and other developing countries, in addition to the U.S.

[3] Recipient countries are also called ''cooperating countries'' to distinguish them from recipients of grants.

[4] Prior to Public Law 102–391, FAA 604(a) stated, ''Funds made available under this chapter may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States, and only if the price of any commodity procured in bulk is lower than the market price prevailing in the United States at the time of procurement, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.''

The overwhelming majority of comments received in response to the Proposed Rule (as well as suggestions in response to the ANPRM) endorse this revised approach of allowing procurements in the recipient and developing countries as well as the U.S., as a ''very positive'' and ''very responsive'' approach which is ''long overdue'' and will ''eliminate many longstanding and problematic issues'' with a current regulation that is ''overly complex and difficult to implement.'' Most commenters anticipated that the ''streamlining of the procurement process'' will allow resources to go further and achieve greater results ''at a time when aid and development communities are challenged to do more with fewer resources.'' The overall tenor of all comments received was favorable, even highly so, to the proposed revisions. Some commenters commented that the revisions did not go as far as possible in terms of eliminating requirements and imposing internal deadlines on the time for processing waivers. All comments are discussed below at part III.

II. The Final Rule

A. Purpose of Rule

The purpose of this rule is to bring USAID regulations into full alignment with Section 604(a) of the Foreign Assistance Act of 1961, as amended, which directs that federal program funds made available under the FAA may be used for procurement ''in the United States, the recipient country, or developing countries.'' The Final Rule also includes principal geographic codes that reflect existing, special procurement authorities for the Development Fund for Africa, 22 U.S.C. 2293 *et seq.* (DFA) and New Independent States (NIS) 22 U.S.C. 2295b, established by Congress.

B. USAID Regulations Amended by This Rule

The Final Rule amends in its entirety 22 CFR part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID. The Final Rule applies to all commodities and services procured under implementing instruments financed by USAID with program (sometimes called assistance) funds under the authority of the FAA.

C. Summary of Changes to the Existing Rule

The Final Rule revises the existing regulation to track more closely the statutory procurement authority provided under the FAA by establishing a new principal geographic code for procurements from the U.S., recipient country, and developing countries, as well as including in the Final Rule special principal geographic codes under the DFA and NIS authorities, above. The Final Rule also deletes the concept of ''origin,'' which is increasingly obsolete and difficult to apply in today's globalized economy, and in place of the concept of ''origin,'' simplifies and strengthens the concepts of ''source'' and ''nationality'' in order to reflect better Congress's directive to procure from the U.S., recipient countries, or developing countries. Based on comments received, the Final Rule additionally deletes from the Proposed Rule a requirement for documentation of ''multiple sales'' under the definition of the statutory term ''available for purchase,'' and substitutes a prohibition that recipients and contractors do not engage vendors to circumvent the ''source'' provisions by ordering commodities otherwise ''not available'' in countries in the designated principal geographic code at the time of sale. This change achieves the same objective as that notified in the Proposed Rule but will impose fewer burdens on implementers with requirements that would have no practical effect on compliance. The Final Rule clarifies that waivers to permit procurements beyond the U.S., the recipient country, or developing countries will be to Code 935— any area or country but excluding ''prohibited sources'' (formerly referred to as ''foreign policy restricted countries''), reflecting USAID's agreement with comments that explicit reference be made to Code 935 as the code to which waivers will authorize procurement. USAID will maintain a list of prohibited sources which will be available in USAID's Automated Directives System, ADS 310; as in the current rule, there is no waiver of the statutory prohibited sources prohibition. The Final Rule also raises the amount, from $5 million to $10 million, for which foreign-owned (non-governmental) local firms will be eligible for construction procurement because that amount has not been raised in over fifteen years, and confirms the current requirement that USAID determine that no capable U.S. construction company is operating in the cooperating/recipient country or, if there is such a company, that it is not interested in bidding for the proposed contract. Finally, the Final Rule also clarifies that case by case waivers can be approved by commodity or service type or category (for example, a category of medical equipment like diagnostic

machinery, or of services like translation services), to obviate the need for repeat or serial waivers for the same type or category of commodity or service. This clarification more explicitly reflects past and current Agency practice.

III. Responses to Comments Received on the Proposed Rule

On August 19, 2011 USAID published in the **Federal Register** (76 FR 51916) a Proposed Rule for Procurement of Commodities and Services Financed by USAID. By October 3, 2011, the closing date for comments, USAID received sixteen (16) external comments, including comments from USAID partners that have received USAID funding, trade associations that represent them, and other interested parties. All of the comments were considered, and all relevant or substantial comments are discussed below. The following is a summary of comments by issue, and the Agency's responses to those comments.

A. General Comments

All of the comments received were in favor of revision of USAID's procurement regulations; the variation of opinion among commenters concerning how to revise the regulations is discussed below. Specific areas identified as significant improvement are improved procurement authorities in cooperating and developing countries, removal of the increasingly troublesome concept of ''origin,'' improved waiver procedures and overall clarification and simplification of the rule.

Comment: Comments from some for-profit and non-profit USAID program implementing grantees and contractors urged USAID to revise procurement practices even more broadly, by requesting Congress to amend the procurement authorities in the FAA to untie aid completely.

Response: While USAID consulted with the pertinent authorizing and appropriations Congressional committee staff concerning the revisions reflected in the Proposed Rule, amendments to the FAA are beyond the scope of this rulemaking process, and USAID has no plans to request statutory amendments to FAA procurement provisions at this time.

Comment: Several comments lauded USAID for engaging in a public rulemaking process but urged USAID to avoid reliance on internal agency policies and eliminate or limit references to such policies, including USAID's Automated Directive System (ADS). Those commenters indicated references should be to the USAID Web site so as to not give unwarranted regulatory credence to the ADS.

Response: USAID shares the concern that reliance on additional sources of guidance concerning application of the source and nationality requirements may result in inconsistent application of the Final Rule. USAID has limited ADS references in the Final Rule to the minimum necessary to ensure the rule is in compliance with sometimes changing Congressional mandates, including those concerning prohibited sources and restricted commodities. Because the list of prohibited sources and restricted commodities is, at least in part, determined by foreign policy and consultations with Congress on annual appropriations, including non-binding committee reports and statements of managers, a minimal amount of flexibility in defining prohibited sources and restricted commodities is necessary for effective and efficient implementation of the Final Rule.

Comment: While all comments supported the removal of the concept of ''origin'' from the rule, some comments expressed concern that the requirement that recipients and contractors document that commodities be ''available for purchase'' in a country reflected in the principal geographic code added back complication into USAID's clarification and simplification of the rule. Others opined that the concept of a single ''principal geographic code'' did not reflect other statutory procurement authorities, such as those benefitting the Development Fund for Africa and New Independent States.

Response: These concerns are addressed below in the comments on § 228.01, Definitions, and § 228.03, Identification of the Principal Geographic Codes.

Comment: Several commenters advised USAID to revise the procurement provisions ''reserved'' at 22 CFR part 226, Administration of Assistance Awards to Non-governmental Organizations.

Response: USAID appreciates these comments, but they are outside the scope of this rule. Nonetheless, USAID recognizes the need to ensure consistency between this rule and related regulations and is in the process of reviewing and determining appropriate revisions to 22 CFR part 226; ADS chapters 303, 310, 311, 312, and 221; and 48 CFR chapter 7 (the USAID Acquisition Regulation). Such changes will be made to conform to the Final Rule and are, therefore, logical outgrowths of the Final Rule.

Comment: There is confusion as to what extent the prohibition on assistance to countries to which assistance is prohibited by law (simplified to ''prohibited sources'' in the Final Rule) extends to citizens of those countries as consultants/independent contractors.

Response: The Final Rule clarifies in § 228.15 that citizens or permanent residents of countries which are prohibited sources are not eligible to provide commodities or services as an employee, individual contractor, or consultant under this rule.

Comment: The term ''goods'' should be used in place of the term ''commodities'' in the Final Rule, because the term ''commodities'' may create confusion due to its use in USAID's food programs.

Response: In order to align USAID's rules for procurement completely with the Congressional mandate for ''Procurement'' at Section 604(a) of the FAA, the Final Rule contains the same terminology as Section 604(a), including the statutory terms ''recipient country'' and ''commodities.'' The Final Rule includes alternative, more familiar terms such as ''cooperating country'' along with recipient country, and ''goods'' along with commodities where suggested and appropriate, in order to clarify any confusion about terminology and application.

B. Comments on Specific Provisions

1. § 228.01 Definitions

Comment: One commenter suggested lettering the definitions for easy reference.

Response: USAID followed the alphabetical listing used in other parts of the Code of Federal Regulations, such as the Federal Acquisition Regulation at 48 CFR part 1, in formatting this Final Rule. Listing each definition in alphabetical order without lettering them will simplify any future additions or deletions to this section.

Comment: Regarding the definition in the Proposed Rule of ''available for purchase,'' many commenters expressed concern that the requirement for recipients and contractors to document multiple sales of a commodity or service by the supplier of the commodity or service in an authorized country during the past calendar year would create a compliance burden. In addition, commenters recommended increasing the *de minimis* exception to documentation requirements, in order to reduce the compliance burden.

Response: The definition was intended to prevent ''fly by night'' vendors, either individual or

enterprises, and especially those subsidized by foreign governments, from establishing themselves as sources in countries within the principal geographic code designated in the implementing instrument, to take advantage of procurements funded by USAID. The definition was also intended to discourage recipients and contractors from engaging local suppliers to import commodities on their behalf for purposes of circumventing the source rules.

USAID has responded to concerns about regulatory burden by removing the documentation of multiple sales requirement from the definition of ''available for purchase'' in the Final Rule (consequently, the *de minimis* exception has not been amended, but deleted as well). Instead, USAID addresses the circumvention issue directly: Section 228.11, Source of commodities, now contains an express prohibition from engaging suppliers of commodities in an authorized country to import commodities from a country outside of the principal geographic codes for the purposes of circumventing the requirements of this rule, enforceable through disallowance by USAID of the cost of procurement of the subject commodity. USAID as a matter of course retains the usual right, at its discretion, to request additional information if it has questions about an allowable cost. USAID has also determined that the ''fly by night vendor'' issue can also be addressed under the nationality requirements of § 228.12 and restrictions on eligibility of foreign government- owned enterprises in § 228.13, see discussion below.

In response to comments received, the definition of ''available for purchase'' has also been amended to reflect the addition in the Final Rule of existing Code 935 (any area or country but excluding prohibited sources) in § 228.03, ''Identification of the Principal Geographic Codes,'' by exempting Code 935 procurements from the definition of ''available for purchase.'' Code 935 is being retained to reflect the authorities for DFA and NIS, as well as to designate the source and nationality to which waivers under Subpart D will be made. Code 935 procurements are exempted from the definition of ''available for purchase'' because, as commenters noted, the source rules will not apply and no circumvention issues will arise when ''any country or region'' is the authorized principle geographic code under Code 935.

Comment: One commenter pointed out that the Proposed Rule, § 228.15, Miscellaneous Service Transactions, contained a definition of ''commission'' more appropriately included in the definitions section, § 228.01.

Response: The definition of ''commission'' has been moved to § 228.01, as have the definitions of ''long term lease'' and ''motor vehicles'' previously included in the requirements, rather than definitions, section of the current regulation and the Proposed Rule.

Comment: Commenters suggested non-substantive, slight clarifications/ grammatical improvements to the definitions of ''developing countries,'' ''implementing document,'' and ''source'' in the Proposed Rule.

Response: The suggestions have been accepted, and the changes made in the Final Rule. Please note the term ''implementing document'' has been slightly changed to ''implementation instrument'' in the Final Rule to correspond with Agency terminology in the ADS Glossary.

Comment: Regarding the definition of ''nationality'' in the Proposed Rule, one commenter suggested that not all countries' immigration laws have the immigration status of ''lawful permanent resident'' as included in the definition of ''nationality'' in the Proposed Rule.

Response: The concept of lawful permanent residency as part of the ''nationality'' requirement has been amended to add ''or equivalent immigration status to live and work on a continuing basis,'' to address immigration law/status variances from country to country, while at the same time confirming that some form of continuing or permanent residency is necessary to satisfy the nationality requirement.

Comment: Several commenters inquired whether sub recipients and subcontractors came within the scope of this regulation and the definition of ''recipients and contractors.''

Response: The definition of ''recipients and contractors'' has been amended to include sub recipients and subcontractors, which confirms that this rule applies to both. Please note that partner country governments are not subjects of this Final Rule, although USAID host country government contracting requirements do contain procurement provisions which are still applicable unless revised.

Comment: Several commenters requested additional definitions.

Response: USAID has added to § 228.01 Definitions, a definition of ''Pharmaceuticals'' and also of ''Free Port or Bonded Warehouse'' in response to requests for the same.

Additional change: The Final Rule also simplifies the term in the Proposed Rule, ''countries to which assistance is prohibited by law'' by replacing it with the concept of ''prohibited sources'' adapted from the Federal Acquisition Regulation, 48 CFR part 1, and providing a USAID-specific definition at § 228.01. Please note the definition includes countries which are subject to applicable sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control, and other applicable executive branch restrictions. As in the Proposed Rule, USAID will provide a list of Prohibited Sources in ADS 310.

2. § 228.02 Scope and Application

Comment: Several commenters suggested that this section confirm that procurements with program income and under Title II Food Aid programs are not required to comply with 22 CFR part 228 in its entirety.

Response: The Final Rule includes specific exceptions from coverage of this regulation for procurements with program income and procurements funded by Title II food aid funds, as well as an additional sentence reaffirming the non-applicability of this regulation to the six exempted categories of procurements at § 228.02. The intent is to clarify that according to its terms, the statutory requirement of FAA 604(a) apply only to ''[f]unds made available for *assistance* (emphasis added) under this Act'' (the FAA).

The Final Rule also includes two slight, non-substantive grammatical refinements to § 228.02.

3. § 228.03 Identification of the Principal Geographic Codes

Comment: Several implementing grantee and contractor commenters suggested that the establishment of one geographic code was an oversimplification of USAID's procurement authorities.

Response: The Proposed Rule attempted to mirror the specific language of USAID's statutory procurement authority to procure in ''the United States, the recipient country, or developing countries,'' FAA 604(a), by establishing one principal geographic code to replace the many others developed over the years. The ''additional authorities and conditions'' language in § 228.02, above, was intended to preserve statutory procurement authority that augments FAA 604(a), such as Support for Economic and Democratic Development of the Independent States of the Former Soviet Union, 22 U.S.C. Section 2295b (reflected in the current regulation as Code 110), and Development Fund for Africa, 22 U.S.C. 2293 *et seq.* (reflected

in the current regulation as Code 935) However, due to the possibility of confusion, the Final Rule adds back Principal Geographic Codes 110 and 935, as specified below in § 228.03.

4. § 228.11 Source of Commodities

Comments and response: as noted above in III.B., § 228.11 now contains a restriction on recipients and contractors engaging vendors to import commodities in circumvention of source and nationality requirements, in lieu of requirements in the Proposed Rule for documentation of multiple sales in past year, now deleted from the definition of ''available for purchase'' in § 228.01 of the Final Rule.

5. § 228.12 Nationality of Suppliers of Commodities and Services

Comments: One commenter expressed opinions that by requiring both principal place of business in a country in the primary geographic code and requiring majority direct or beneficial ownership of for profit organizations by individuals who are citizens or lawful permanent residents of a country in the designated code, the regulation would result in the non-eligibility and exclusion of ''a whole class of foreign-owned development organizations even though such organizations have a substantial involvement in the United States, or developing country, economies.''

Response: The nationality provision (along with the restrictions on eligibility of foreign government controlled enterprises, below) was intended to address the specter of ''fly by night '' vendors from otherwise ineligible (not recipient or developing) third countries descending on a recipient or developing country, taking advantage of less rigorous citizenship or business establishment requirements, and undercutting U.S. or local vendors. In order to address commenter concerns about exclusion of legitimate foreign (but not foreign government) owned or controlled international development organizations, the nationality requirements for organizations have been simplified to require, as uniformly recommended by commenters (1) organization under the laws of a country in the principal geographic code designated in a implementing instrument; (2) conducting business as a ''going concern'' (functioning business entity for the foreseeable future) in such country; and either (3) management by a governing body, the majority of whom are citizens or residents of such country or (4) employment of citizens or residents of such country in more than half of its permanent full time positions and half of its principal management positions. The criticized ''majority direct ownership or beneficial ownership'' requirement of the Proposed Rule has been deleted in its entirety; USAID anticipates that the majority management and employment requirements will discourage fly by night vendors while at the same time preserving the eligibility of foreign-owned but U.S. or recipient/developing country benefitting, foreign assistance organizations.

6. § 228.13 Foreign Government-Owned Organizations

Comment: One commenter expressed concern that the Proposed Rule did not adequately distinguish between foreign-owned commercial enterprises, which are not eligible for financing, and foreign entities, such as government ministries, but also educational, health care, and other public sector actors, which are appropriate and necessary partners for USAID.

Response: The exclusions at § 228.13 have been broadened in the Final Rule to preserve the eligibility of government education institutions, health care providers, and technical entities not formed primarily for a business or commercial purpose from the restrictions of this provision (similar to recent Millennium Challenge Corporation provisions on foreign government-owned enterprises). In addition, a statement is added to the second sentence of § 228.13 to emphasize that regional and local governments, along with national government ministries and agencies, are eligible partners for USAID financing.

7. § 228.15 Nationality of Individuals Under Contracts or Subcontracts for Services

Comment: Several commenters praised the revisions but inquired whether or not individual contractors were covered by § 228.15.

Response: The Final Rule has been amended to clarify that individual contractors as well as consultants of recipients and contactors are eligible, and not subject to the eligibility requirements. However, as above, citizens or permanent residents of countries which are prohibited sources are not eligible for USAID financing under the Final Rule.

8. § 228.17 Special Procurement Rules for Construction and Engineering Services

Comment: Several commenters questioned how reasonable it is for recipients and contractors to determine which advanced developing countries have attained a competitive capacity in international markets for construction and engineering services.

Response: § 228.17 has been amended to clarify in the Final Rule that USAID makes such determinations, and will make those determinations available through ADS 310.

9. § 228.18 Long-Term Leases

Comment: One commenter inquired whether or not a lease of 18 vehicles for 10 days each at the same time would trigger the long term lease provisions.

Response: § 228.18 has been amended in the Final Rule to move the definition of long term lease into the definitions section, § 228.01, and also to clarify that the source and nationality requirements of Subpart B are only triggered for repeat leases of single vehicles totaling 180 days or more.

10. § 228.19 Special Rules Requiring United States Manufacture or Procurement

Comment: Several commenters suggested grammatical edits to clarify the title of this section, advocated for revisions of USAID's ADS 312 on Eligibility of Commodities and Commodity Eligibility Listing, and also requested inclusion of a definition of ''pharmaceuticals'' in the Final Rule.

Response: Recommendations for grammatical edits were accepted and made, and definitions of ''commodities'' and ''pharmaceuticals'' have been added to § 228.01, Definitions, in the Final Rule. § 228.19(a), regarding Agriculture Commodities, has been revised to state that USAID provides a list of restricted agricultural commodities in ADS 312. Section 228.19(b) clarifies that financing transportation or driver services from an individual or commercial entity and not directly financing the purchase or lease of a vehicle, is subject to the nationality of suppliers requirements of § 228.12, not the restrictions on motor vehicle procurements. The provision on pharmaceuticals in § 228.19(c) has been revised to comply with ''plain language'' guidance for federal regulations.

11. Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

Comment: Four commenters suggested revision or elimination of provisions related to the Cargo Preference Act, 46 U.S.C. 55305 (§ 228.21) and eight commenters suggested revision or elimination of provisions related to the Fly America Act, 49 U.S.C. App. 1517 (§ 228.22) in the Final Rule.

Response: USAID is participating in a separate interagency working group considering updates to Cargo Preference Act implementing guidance and regulations. Further action to update these implementing regulations, if any, will be subject to notice and comment, and will be published in the **Federal Register** by the Department of Transportation's Maritime Administration.

Currently, USAID does not plan to engage Congress concerning amendments to the Fly America Act, although the provisions of § 228.22 have been slightly revised to reflect that it applies only to transport of commodities under the Final Rule.

12. Subpart D—Waivers

Comments: The waiver provision of the proposed rule received a substantial number of comments from implementing grantee and contractor commenters as well as their advocacy groups. USAID received the following relevant and significant suggestions: (1) Deletion of the term ''produced in'' as part of the larger phrase, ''not produced in and available for purchase in'' as grounds for a waiver under § 228.30(a)(1), due to concern the words ''produced in'' were reintroducing the concept of ''origin'' otherwise deleted from the Proposed Rule; (2) clarification whether or not cost savings for procurement of a commodity could be grounds for a waiver to ''promote efficiency in the use of United States foreign assistance resources''; (3) assigning authority to approve waivers to USAID senior field staff, as is done with waivers for USAID branding and marking requirements, 22 CFR 226.91, and (4) imposing an internal time limit for USAID's processing waivers, perhaps as short as 15 days.

Responses: (1) While the term ''produced in and available for purchase in'' is retained in the Final Rule because it tracks the statutory language at Section 604(a) of the FAA, a clarification has been added that the term as used in § 228.30(a)(1) will have the same meaning as the definition of ''available for purchase'' in § 228.1, and thus not reintroduce inquiries into where a commodity has been ''produced'' or the concept of ''origin'' through the backdoor of the waiver provision; (2) While a favorable price differential of 50% or greater may be grounds for approval of a waiver in order to promote efficiency in the use of foreign assistance resources, it would be subject to the discretion of the approving authority for the waiver; (3) Similarly to waiver approval authority for USAID branding and marking requirements, under USAID's internal delegations of authority, waiver authority for source, nationality requirements currently is assigned to USAID's most senior officials in field missions, as suggested; and (4) While USAID declines to impose time limitations on internal processing of waivers, USAID will be providing training on the Final Rule to USAID staff, and anticipates that the additional guidance on waivers provided in the Final Rule will result in expedited processing of waivers. USAID also expects that revisions to source and nationality requirements reflected in the Final Rule will obviate the need for many previously needed waivers.

USAID has declined a suggestion to incorporate approved waivers into the Final Rule in order to preserve the distinction between the requirements of the rule and the special circumstances reflected in an approved waiver determination.

C. Subpart E, Effective Date

Comment: USAID received suggestions advocating for a delayed effective date due to the necessity to absorb changes made by the Final Rule, and one suggestion for a retroactive effective date due to the importance and benefit of changes made by the rule.

Response: USAID has established an effective date of February 6th, 2012 in order to allow for training of USAID staff on the Final Rule, and also to prepare implementation guidance and ensure related agency policy which reflects the revisions to USAID procurement requirements established in the Final Rule. USAID has no plan to make the implementation date retroactive, a step that requires meeting stringent legal tests to overcome a presumption that new laws be applied prospectively.

Because the effective date is specified in the section following the preamble Summary in publication of the Final Rule, Subpart E has been removed. If need be, USAID awards in effect at the time the Final Rule becomes effective that contain any non-Code 935 geographic codes shall be modified to reflect the principal geographic codes established at § 228.03. All new awards after February 6, 2012 are subject to the Final Rule.

IV. Regulatory Planning and Review: Findings and Certifications of Impact Assessment

A. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804. However, in order to ensure compliance with Executive Branch rulemaking policy and priorities, this rule has been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

C. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the Final Rule and has certified that its provisions would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There is no reporting or documentation or other information collection requirements under the Final Rule that require analysis under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 22 CFR Part 228

Foreign aid, Procurement, USAID contractors, Grantees, and Non-governmental recipients.

For the reasons set forth above and based on the comments received in response to the ANPRM and Proposed Rule, USAID revises 22 CFR part 228 to read as follows:

PART 228—RULES FOR PROCUREMENT OF COMMODITIES AND SERVICES FINANCED BY USAID

Sec.

Subpart A—Definitions and Scope of This Part

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended, E.O. 12163, Sept. 29, 1979, 44 FR 56673: 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

§ 228.01 Definitions.

As used in this part, the following terms shall have the following meanings:

Advanced developing countries mean those countries that are categorized by the World Bank as upper middle income countries according to their gross national income per capita, except for those countries in which USAID provides assistance. USAID will maintain a list of advanced developing countries primarily based on the most recent World Bank determinations, and will make the list available in USAID's Automated Directives System, ADS 310. This list will include determinations made under § 228.17 of this part.

Available for purchase means for commodities, that the commodity is offered for sale in a country in the authorized principal geographic code at the time of purchase from the supplier, irrespective of the place of manufacture or production, unless it is a prohibited source country. If applicable, the commodity must also be able to be serviced, and, if warrantied, have a valid warranty. For services, available for purchase means the service is offered from a vendor which has complied with nationality and foreign government-owned organization requirements of this regulation, and is otherwise organized in a country in the authorized principal geographic code designated in an implementing instrument. This definition does not apply to procurements under the geographic Code 935, see § 228.03 of this part, because that geographic code is for any country or area except for prohibited source countries.

Commission means any payment or allowance by a supplier to any person for the contribution which that person has made to secure the sale or contract for the supplier or which that person makes to securing on a continuing basis similar sales or contracts for the supplier.

Commodities or *goods* means any material, article, supply, good, or equipment.

Commodity-related services means delivery services and/or incidental services.

Cooperating country or *recipient country* means the country receiving the USAID assistance subject to this part 228, and includes all the countries receiving assistance under a regional program or project.

Delivery means the transfer to, or for the account of, an importer of the right to possession of a commodity, or, with respect to a commodity-related service, the rendering to, or for the account of, an importer of any such service.

Delivery service means any service customarily performed in a commercial export or import transaction which is necessary to affect a physical transfer of commodities to the cooperating/recipient country. Examples of such services are the following: export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. ''Delivery service'' may also include work and materials necessary to meet USAID marking requirements.

Developing countries means those countries that are categorized by the World Bank as low or lower middle income economies according to their gross national income per capita, and also includes all countries to which USAID provides assistance. USAID will maintain a list of developing countries primarily based on the most recent World Bank determinations, and will make the list available in USAID's Automated Directives System, ADS 310.

Free Port or *Bonded Warehouse* is a special customs area with favorable customs regulations (or no customs duties and controls for transshipment).

Implementing instrument means a binding relationship established between USAID and an outside party or parties to carry out USAID programs, by authorizing the use of USAID funds and/or nonfinancial resources for the procurement of services or commodities and/or commodity related services. Implementing instruments include specific conditions that apply to each such procurement. Examples of such instruments include contracts, grants, cooperating agreements, and interagency agreements.

Incidental services means services such as installation, erection, maintenance, or upgrading of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment, or similar services provided for the authorized disposition of such commodities.

Long term lease means, for purposes of subpart B, a single lease of more than 180 calendar days; or repetitive or intermittent leases under a single award within a one-year period, which cumulatively total more than 180 calendar days. A single lease may consist of lease of one or more of the same type of commodity within the same lease term.

Motor vehicles means self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles, ATVs, and utility vehicles. Excluded from this definition are ambulances, snowmobiles, industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks), boats, and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

Mission means the USAID Mission, office or representative in a cooperating/recipient country.

Nationality refers to the place of legal organization, ownership, citizenship, or lawful permanent residence (or equivalent immigration status to live and work on a continuing basis) of suppliers of commodities and services.

Pharmaceutical means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals; any substances (other than food) intended to affect the structure or any function of the body of humans or animals; and, any substance intended for use as a component in the above. The term

includes drugs, vitamins, oral rehydration salts, biologicals, and some in-vitro diagnostic reagents/test kits; but does not include devices or their components, parts, or accessories. Contraceptives, including condoms, are not included in this definition.

Prohibited sources means countries to which assistance is prohibited by the annual appropriations acts of Congress or other statutes, or those subject to other executive branch restrictions, such as applicable sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control. USAID maintains a list of prohibited sources, available in USAID's Automated Directives System, ADS 310.

Recipients and contractors. Recipient has the same meaning as defined in 22 CFR 226.02, except that it shall include non-U.S. individuals, entities and organizations, as well as subrecipients. *Contractors* mean those entities which enter into a contract, as the term is defined in 48 CFR part 2, with the U.S. Government, and includes subcontractors.

Services means the performance of identifiable tasks, rather than the delivery of an end item of supply.

Source means the country from which a commodity is shipped to the cooperating/recipient country or the cooperating/recipient country itself if the commodity is located therein at the time of the purchase, irrespective of the place of manufacture or production, unless it is a prohibited source country. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, ''source'' means the country from which the commodity was shipped to the free port or bonded warehouse.

Supplier means any person or organization, governmental or otherwise, who furnishes services, commodities, and/or commodity related services, including delivery or incidental services, financed by USAID.

United States means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories and possessions.

USAID means the United States Agency for International Development or any successor agency, including when applicable, each USAID Mission or office abroad.

USAID Principal Geographic Code means a USAID code which designates a country, a group of countries, or an otherwise defined area. The USAID principal geographic codes for purposes of procurement are described in § 228.03 of this part.

§ 228.02 Scope and application.

This part is applicable to commodities and services procured under implementing instruments using Federal program funds made available for assistance under the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.* (FAA). The authorities and conditions applicable to the procurement of commodities or services shall be those in effect on the effective date of an implementing instrument for procurement of commodities or services. They include any directives, prohibitions, restrictions or other statutory and related requirements by the United States Congress that govern the Federal program funds appropriated to fund the specific procurement, including those on types of assistance and recipients of assistance. If additional authorities and conditions are otherwise provided by statute, regulation, or related administrative authorities, those authorities and conditions shall be incorporated in the implementing instrument and shall prevail in the event of any conflict with this part 228. This part is not applicable to

(a) Procurements of commodities and services under General Services Administration (GSA) supply schedules;

(b) Procurements with donated funds received under USAID's gift authority, FAA section 635(d);

(c) Procurements funded by cost share or program income as defined in 22 CFR 226.24;

(d) USAID Title II food programs, including monetization proceeds thereunder.

(e) Procurements funded from any congressional appropriation authorized by any statute other than the FAA;

(f) Procurements with non-program funds (such as operational expense account funds) made available under the FAA for any purpose other than assistance.

§ 228.03 Identification of the authorized principal geographic procurement codes.

(a) USAID has established principal geographic codes which are used by USAID in implementing instruments. This regulation establishes a presumptive authorized principal geographic code, Code 937, for procurement of commodities and services unless otherwise specified in the implementing instrument. Code 937 is defined as the United States, the cooperating/recipient country, and developing countries other than advanced developing countries, and excluding prohibited sources. USAID maintains a list of developing countries, advanced developing countries, and prohibited sources, which will be available in USAID's Automated Directives System, ADS 310.

(b) For purposes of procurements under the authority of the Development Fund for Africa, 22 U.S.C. 2293 *et seq.;* for any waivers authorized under Subpart D of this regulation; and if otherwise designated in an implementing instrument, the authorized principal geographic code shall be Code 935, any area or country but excluding prohibited sources.

(c) For purposes of procurements under the Support for Economic and Democratic Development of the Independent States of the Former Soviet Union, 22 U.S.C. 2295b, the authorized principal geographic codes are Code 937 and Code 110 (New Independent States).

(d) Additional principal geographic codes may be added to this section if authorized by Congress.

Subpart B—Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing

§ 228.10 Purpose.

Sections 228.11 through 228.19 set forth the rules governing the eligible source of commodities and nationality of commodity and service suppliers for USAID Federal share financing under prime and subawards. These rules may be waived in accordance with the provisions in subpart D of this part.

§ 228.11 Source of commodities.

The source of all commodities financed with Federal program funds appropriated under the Foreign Assistance Act of 1961, as amended, shall be Code 937 (unless Code 935 or 110 are designated in the implementing instrument). Procurements of agricultural commodities, motor vehicles and pharmaceuticals must also comply with the special procurement rules in § 228.19 of this part. Recipients and contractors are prohibited from engaging suppliers of commodities in an authorized country to import commodities from a country outside of the authorized principal geographic codes for the purposes of circumventing the requirements of this rule. Any violation of this prohibition will result in the disallowance by USAID of the cost of the procurement of the subject commodity.

§ 228.12 Nationality of suppliers of commodities and services.

The suppliers of all commodities and services financed with federal program funds appropriated under the Foreign Assistance Act of 1961, as amended, shall:

(a) If an individual, except as provided in § 228.15, be a citizen or lawful permanent resident (or equivalent immigration status to live and work on a continuing basis) of a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument),

(b) If an organization,

(1) Be incorporated or legally organized under the laws of a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument);

(2) Must be operating as a going concern in a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument), and either

(3) Be managed by a governing body, the majority of whom are citizens or lawful permanent residents (or equivalent immigration status to live and work on a continuing basis) of countries in Code 937 (or other principal geographic procurement code designated in an implementing instrument), or

(4) Employ citizens or lawful permanent residents (or equivalent immigration status to live and work on a continuing basis) of a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument), in more than half its permanent full-time positions and more than half of its principal management positions.

§ 228.13 Foreign government-controlled organizations.

Firms operated as commercial companies or other organizations or enterprises (including nonprofit organizations) in which foreign governments or their agents or agencies have a controlling interest are not eligible as suppliers of commodities and services, except if their eligibility has been established by a waiver approved by USAID in accordance with the provisions set forth in subpart D of this part. Government ministries or agencies of the cooperating/recipient country, including those at the regional and local levels, and government educational institutions, health care providers, and other technical entities of the cooperating/recipient country not formed primarily for commercial or business purposes, are eligible as suppliers of commodities and services.

§ 228.14 Construction procurement with foreign-owned local firms.

(a) When the estimated cost of a contract for construction is $10 million or less and only local firms will be solicited, a local corporation or partnership which is a foreign-owned (owned or controlling interest by individuals not citizens or permanent residents, or equivalent immigration status, of the United States or the cooperating/recipient country) local firm will be eligible if it is determined by USAID to be an integral part of the local economy, see paragraph (b) of this section. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the cooperating/recipient country or, if there is such a company, that it is not interested in bidding for the proposed contract.

(b) A foreign-owned local firm is an integral part of the local economy provided:

(1) It has done business in the cooperating/recipient country on a continuing basis for at least three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;

(2) It has a demonstrated capability to undertake the proposed activity;

(3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are lawfully resident (or equivalent immigration status to live and work on a continuing basis) in the cooperating/recipient country; and

(4) Most of its operating equipment and physical plant are in the cooperating/recipient country.

§ 228.15 Nationality of employees and individuals under contracts or subcontracts for services.

The rules set forth in §§ 228.10 through 228.13 of this part do not apply to the employees of contractors, or individuals providing technical or professional services to recipients or contractors. However, such individuals must not be citizens or lawful permanent residents (or equivalent immigration status) of countries which are prohibited sources.

§ 228.16 Miscellaneous service transactions.

This section governs certain miscellaneous services.

(a) *Commissions.* The nationality rules of this part do not apply to the payment of commissions by suppliers.

(b) *Bonds and guarantees.* The nationality rules of this part do not apply to sureties, insurance companies or banks who issue bonds or guarantees under USAID-financed contracts.

(c) *Liability insurance under construction contracts.* The nationality rules of this part do not apply to firms providing liability insurance under construction contracts.

§ 228.17 Special procurement rules for construction and engineering services.

Advanced developing countries, as defined in § 228.01, which USAID has determined to have attained a competitive capability in international markets for construction services or engineering services are not eligible to furnish USAID-financed construction and engineering services unless approved to do so under a waiver to Code 935 under subpart D of this part.

§ 228.18 Long-term leases.

Any commodity obtained under a long-term lease agreement as defined in § 228.01, including motor vehicles, is subject to the source and nationality requirements of this subpart B of this part, including the special procurement rules as set forth in § 228.19.

§ 228.19 Special rules requiring United States manufacture or procurement.

(a) Certain agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354). USAID maintains a list of restricted agricultural commodities and related policies, which is available in USAID's Automated Directives System, ADS 312.

(b) Motor vehicles must be manufactured in the United States to be eligible for USAID financing (22 U.S.C. 2396). Any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. However, financing of transportation or driver services from an individual or commercial entity and not directly financing the purchase or lease of a vehicle, is subject to the requirements at § 228.12. Financing transportation or driver services means:

(1) The vehicle is independently owned or leased by the hired driver or company;

(2) The vehicle will be maintained by the individual or commercial entity and driven only by the hired driver(s); and

(3) The vehicle is not directly leased, either as a separate line item in the contract separate from the cost of the driver's services, or under a separate contract.

(c) Under section 606(c) of the FAA, USAID cannot finance any pharmaceutical product that is manufactured outside of the United States if the pharmaceutical is covered by a valid U.S. patent, unless the U.S. patent holder expressly authorizes the manufacture of the pharmaceutical. Without such express authorization, the pharmaceutical must be purchased from the U.S. patent holder. In addition, USAID shall not finance non-contraceptive pharmaceuticals without prior written approval as provided in USAID's Automated Directives System Chapter 312. Contraceptives may be financed in accordance with the procedures in ADS 312.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

§ 228.20 Purpose.

Sections 228.21 through 228.24 of this part set forth the rules governing the eligibility of commodity-related services, both delivery services and incidental services, for USAID financing. These rules, except for §§ 228.21 and 228.22, may be waived in accordance with the provisions in subpart D of this part. The rules on delivery services apply whether or not USAID is also financing the commodities being transported. In order to be identified and eligible as incidental services, such services must be connected with a USAID-financed commodity procurement.

§ 228.21 Ocean transportation.

When transporting commodities subject to the provisions of the Cargo Preference Act, 46 U.S.C. 55305, USAID will administer its programs in accordance with that act and its implementing regulations in 46 CFR part 381 (and any waivers applicable thereto). Subpart D of 22 CFR part 228 does not apply to this provision.

§ 228.22 Air transportation.

The Fly America Act, Title 49 of the United States Code, Subtitle VII, part A, subpart I, Chapter 401, 40118—Government-Financed Air Transportation, is applicable to all transportation of commodities subject to this part. Subpart D of 22 CFR part 228 does not apply to this provision.

§ 228.23 Other delivery services.

No source or nationality rules apply to other delivery services, such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible when provided as part of a commodity procurement financed by USAID.

§ 228.24 Incidental services.

Source and nationality rules do not apply to suppliers of incidental services specified in a purchase contract relating to equipment.

Subpart D—Waivers

§ 228.30 General.

USAID may waive the rules contained in subparts A, B and C of this part (except for prohibited sources as defined in § 228.01, and §§ 228.21 and 228.22), in order to accomplish project or program objectives. For any waivers authorized, the principal geographic code shall be Code 935, any area or country but excluding prohibited sources. All waivers must be in writing, and where applicable, are limited to the term established by the waiver. All waiver decisions will be made solely on the basis of the following criteria:

(a) Waivers to permit procurement outside of Code 937 or 110 must be based on a case by case determination that

(1) The provision of assistance requires commodities or services of the type that are not produced in and available for purchase in Code 937 or 110, or;

(2) It is important to permit procurement from a country not specified in Code 937 or 110 to meet unforeseen circumstances, or;

(3) To promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives

(b) Case by case waivers under paragraph (a) of this section may be made on the basis of a commodity or service type or category, rather than processing repeat, individual waivers for an identical or substantially similar commodity or service. Such waivers may be approved on a regional, country or program basis. For purposes of paragraph (a)(1) of this section, ''produced in and available for purchase in'' shall have the same meaning as the definition of ''available for purchase'' in § 228.01. A waiver under paragraph (a)(1) may also be based on the fact that a commodity is not available for purchase in Code 937 or 110 in sufficient, reasonable and available quantities or sufficient and reasonable quality that is fit for the intended purpose.

(c) A waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles, and pharmaceuticals must meet the requirements of § 228.19.

(d) Any individual transaction not exceeding $25,000 (excluding those covered by special procurement rules in § 228.19 and excluding procurements from prohibited sources) does not require a waiver and is hereby authorized.

§ 228.31 Authority to approve waivers.

The authority to approve waivers of established policies under this regulation is delegated within USAID. Recipients or contractors shall request any necessary waivers through the USAID agreement or contracting officer.

Raj Shah,

USAID Administrator.

[FR Doc. 2011–33240 Filed 1–5–12; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1160]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 384 (Grand Lake) pontoon bridge across the Gulf Intracoastal Waterway, mile 231.4 West of Harvey Locks, at Grand Lake, Cameron Parish, Louisiana. The deviation is necessary to allow for the safe movement of the increased vehicular traffic crossing the bridge due to another bridge in the area being temporarily removed from service. This deviation allows the bridge to remain closed to navigation during the morning and evening rush hours Monday through Saturday for three months.

DATES: This deviation is effective from 6:30 a.m. on Monday, January 9, 2012 until 5 p.m. on Friday, March 30, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1160 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1160 in the ''Keyword'' box and then clicking ''Search''. They

are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David Frank, Bridge Administration Branch; telephone (504) 671–2128, email *David.m.frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development (LDOTD) has requested a temporary deviation from the operating schedule for the Grand Lake Pontoon Bridge across the Gulf Intracoastal Waterway, mile 231.5 west of Harvey Lock (WHL), at Grand Lake, Cameron Parish, Louisiana. The deviation will allow the bridge to remain closed to navigation from 6:30 a.m. until 8 a.m. and from 3 p.m. until 5 p.m. Monday through Friday beginning on Monday, January 9, 2012 and continuing until Friday, March 30, 2012. The purpose of the deviation is to allow for increased vehicular traffic to safely cross the bridge during the morning and evening rush hours. LDOTD is temporarily removing the Black Bayou Pontoon Bridge from service to conduct repairs to the barge. The bridge is located six miles upstream from the Grand Lake Bridge and is the only other vehicular crossing over the Gulf Intracoastal Waterway.

The pontoon bridge has no vertical clearance in the closed-to-navigation position. The bridge normally opens to pass navigation an average of 1005 times a month. In accordance with 33 CFR 117.5, the bridge opens on signal for the passage of vessels. The bridge will be able to open for emergencies during the closure period.

Navigation on the waterway consists mainly of tugs with tows and some fishing vessels. The delay of up to four hours for six weeks will not have a significant effect on these vessels. No practical alternate route is readily available. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 20, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2012–170 Filed 1–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1158]

Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Isabel S. Holmes Bridge, mile 1.0, across the Northeast Cape Fear River, at Wilmington, NC. The deviation restricts the operation of the draw span to facilitate structural, electrical and mechanical upgrades and repairs of the bridge.

DATES: This deviation is effective from 7 a.m. January 16, 2012, to 11 p.m. April 30, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2011–1158 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1158 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, who owns and operates this double-leaf bascule bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.829(a), to facilitate structural, electrical and mechanical upgrades and repairs of the bridge.

Under the regular operating schedule, the bridge operates as follows: The draw will be closed to pleasure craft from 6 a.m. to 6 p.m. every day except at 10 a.m. and 2 p.m. when the draw will open for all waiting vessels; the draw will open on signal for Government and commercial vessels at all times; and the draw will open for all vessels on signal from 6 p.m. to 6 a.m.

In the closed position to vessels, the Isabel S. Holmes Bridge has a vertical clearance of 42 feet above mean high water.

Under this temporary deviation, the drawbridge will be closed to vessels requiring an opening from 7 a.m. on January 16, 2012 until and including 11 p.m. on April 30, 2012. However, during the period of deviation, vessel openings will be provided if at least three hours advance notice is given to the bridge tender at (910) 251–5774 or via marine radio on channel 13 VHF.

Vessels that can pass under the drawbridge without an opening may do so at all times. There are no alternate routes for vessels transiting this section of the Northeast Cape Fear River. The drawbridge will be able to open in the event of an emergency.

The Coast Guard has coordinated these upgrades and repairs with the Cape Fear River Pilots Association and will use Local and Broadcast Notice to Mariners to inform all users of the waterway of the closure periods for the drawbridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its original operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 22, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–172 Filed 1–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1154]

Drawbridge Operation Regulation; Islais Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Third Street Drawbridge across Islais Creek, mile 0.4, at San Francisco, CA. The deviation is necessary to allow the City of San Francisco to make emergency electrical repairs on the bridge. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 8 a.m. on December 18, 2011 to 6 p.m. on January 31, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–1154 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1154 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of San Francisco requested a temporary change to the operation of the Third Street Drawbridge, mile 0.4, over Islais Creek, at San Francisco, CA. The drawbridge navigation span provides a vertical clearance of 4 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.163(b), the draw shall open on signal if at least 72 hours advance notice is given to the San Francisco Department of Public Works. Navigation on the waterway is commercial and recreational.

The Third Street Drawbridge will be secured in the closed-to-navigation position from 8 a.m. on December 18, 2011 to 6 p.m. on January 31, 2012, to allow the City of San Francisco to complete emergency electrical repairs. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were received.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 18, 2011.

D.H. Sulouff,

Bridge Section Chief, Eleventh Coast Guard District.

[FR Doc. 2012–171 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1097]

RIN 1625–AA11

Regulated Navigation Area; Memorial Bridge Construction, Piscataqua River, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The United States Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Piscataqua River under and surrounding the Memorial Bridge between Portsmouth, NH and Kittery, ME. This temporary interim rule is necessary to provide for the safety of life on the navigable waters during bridge demolition and replacement construction operations. This rule implements certain safety measures, including speed restrictions and the temporary suspension of vessel traffic during construction operations that could be hazardous to nearby vessels.

DATES: This rule is effective in the CFR from January 10, 2012 through December 31, 2013. This rule is effective with actual notice for purposes of enforcement from December 22, 2011 through December 31, 2013. Public comments will be accepted and reviewed by the Coast Guard through December 31, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1097 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1097 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1097 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade Terence Leahy of the Waterways Management Division, U.S. Coast Guard Sector Northern New England; telephone (207) 767–0398, email *Terence.O.Leahy@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt of the Waterways Management Division, U.S. Coast Guard First District, email *Isaac.M.Slavitt@uscg.mil;* telephone (617) 223–8385. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All

comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1097), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1097'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1097'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting in connection with the public comment period for this interim rule. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Although it was not held specifically to solicit public comments on this interim rule and was not announced in the **Federal Register**, the New Hampshire Department of Transportation (NHDOT) held a public waterway user meeting on November 29, 2011, at the Portsmouth, NH City Hall Building where waterway closures and bridge demolition plans were discussed. No comments or concerns were noted during that meeting that would impact the drafting of this rule.

Regulatory Information

The Coast Guard is issuing this interim rule without prior **Federal Register** notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of the public during demolition of the existing Memorial Bridge and subsequent replacement, and it would be contrary to the public interest to delay both demolition and construction.

The need for waterway closures was not brought to the attention of the Coast Guard until November 13, 2011 when the New Hampshire Department of Transportation (NHDOT) requested a complete waterway closure for a 3-day period beginning January 30, 2012. It is impracticable to issue an NPRM and take public comment before January 2012, when the bridge construction that necessitates creation of a regulated navigation area (RNA) is scheduled to begin, and when the bridge is at risk of immediate failure. Following the conclusion of a lengthy bridge study, NHDOT determined that it was immediately necessary to replace the existing Memorial Bridge due to concerns that the existing structure may suffer a catastrophic failure. A bridge failure could inhibit commercial vessels from reaching facilities upstream on the Piscataqua River should the center lift span become stuck in the down position, blocking the main navigation channel. This would have a significant negative economic impact.

Additionally, any delay or cancellation of the ongoing bridge construction plans would be contrary to public interest as the bridge's failure could cause regionally significant economic, environmental, and safety impacts. The Coast Guard has determined that the prompt remediation of the existing structure will mitigate the threat of a possible catastrophic failure.

Once the Coast Guard received notification of these plans on November 13, 2011 by NHDOT, and established the need for waterway closures and speed restrictions for vessel traffic, it was necessary for the Coast Guard to move quickly to protect public safety by safeguarding both the mariners and construction workers during the bridge's demolition and construction. The dynamic nature of the construction process and multitude of construction vessels necessitates that all mariners navigate at a safe speed within the RNA in accordance with Rule 6 of the Inland Navigation Rules, as the barge and construction equipment configuration may change on a daily basis. In order to address any further public concerns, this rule is available for public comment until December 31, 2013. The Coast Guard will publish an amended rule if necessary to address public concerns.

For the reasons discussed, delaying the project is contrary to the public interest, and notice and comment period are impracticable. Under 5 U.S.C.

553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment during demolition and reconstruction operations for the duration of the Memorial Bridge construction, from January 30, 2012 through December 31, 2013.

Discussion of Rule

Due to unanticipated structural failure of the current Memorial Bridge, plans were put in place to demolish the existing bridge structure as quickly as possible and build a new bridge in the current location. The construction of the Memorial Bridge involves large machinery and construction vessel operations above and in the navigable waters of the Piscataqua River. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone. This will be achieved by enforcing a five (5) knots speed limit and ''NO WAKE'' zone in the vicinity of the construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard has discussed this project at length with the NHDOT to identify if the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. At present, NHDOT has not submitted a complete plan for waterway closures due to the expeditious manner that promulgated drafting this regulated navigation area.

On a case-by-case basis, depending on the construction schedule, NHDOT may request a waterway closure on various dates from January 30, 2012 through December 31, 2013. As discussed below, NHDOT will notify the Coast Guard of planned activities as soon as possible.

The COTP Sector Northern New England will cause notice of enforcement, suspension of enforcement, or closure of this regulated navigation area to be made by all appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, the COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting Coast Guard Sector Northern New England Command Center at (207) 767–0303.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal because this regulated navigation area requires vessels to reduce speed through 600 yards of the Piscataqua River, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we expect to give advance notice of such closures.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners or operators of marinas, charter fishing vessels, commercial fishing vessels, facilities servicing deep draft vessels, tugboat operators, and recreational vessels who intend to transit in those portions of the Piscataqua River during the effective period. Alternatively, smaller vessel traffic can transit to the north of Badgers Island and through the backchannel at Seavey Island to avoid any delays caused by closures to the waterway around the Memorial Bridge. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we expect to give advance notice of such closures.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: it requires vessels to reduce speed through 600 yards of the Piscataqua River, therefore causing only a minimal delay to a vessel's transit. Many parties that have the potential to be affected have been involved in the discussions and have made plans to work around the closure times. We will use various appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

The RNA will apply to the width of the Piscataqua River within a 300 yard radius of a position specified in the regulatory text, under and surrounding the Memorial Bridge. During full closures to traffic under the Memorial Bridge, vessels may be allowed to pass through the regulated area with the permission of the COTP.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–(888) REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of an RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination as appropriate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–1097 to read as follows:

§ 165.T01–1097 Regulated Navigation Area; Memorial Bridge Construction, Piscataqua River, Portsmouth, NH.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters, surface to bottom, on the Piscataqua River within a 300 yard radius of position 43°04′46″ N, 70°45′10″ W in the vicinity of the Memorial Bridge construction zone between Portsmouth, NH and Badgers Island in Kittery, ME.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA, and in addition:

(2) In accordance with the general regulations, entry into or movement

within this zone, during periods of enforcement, is prohibited unless authorized by Captain of the Port (COTP) Sector Northern New England.

(3) A speed limit of five (5) knots will be in effect within the regulated area. All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(4) Vessels must comply with all directions given to them by the COTP Sector Northern New England or his on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; New Hampshire State Police, Maine State Police, or other designated craft; or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and should be strictly followed at all times.

(c) *Enforcement.* This regulated navigation area is enforceable 24 hours a day from December 22, 2011 until December 31, 2013.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to be given the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(2) Violations of this regulated navigation area may be reported to the COTP Sector Northern New England, at (207) 767–0303 or on VHF–Channel 16.

Dated: December 22, 2011.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2012–175 Filed 1–9–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0801; FRL–9616–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia, and West Virginia; Determinations of Attainment of the 1997 Fine Particle Standard for the Metropolitan Washington, DC-MD-VA and Martinsburg-Hagerstown, WV-MD Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making determinations that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) fine particle ($PM_{2.5}$) nonattainment area and the Martinsburg-Hagerstown, West Virginia-Maryland (WV-MD) $PM_{2.5}$ nonattainment area (hereafter referred to as ''Areas'') have attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by their applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on February 9, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0801. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^3$ (the ''1997 24-hour standard''). *See,* 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas were designated nonattainment for the 1997 $PM_{2.5}$ NAAQS during this designations process. *See,* 40 CFR part 81.309 (the District), 40 CFR 81.321 (Maryland), 40 CFR 81.347 (Virginia), and 40 CFR 81.349 (West Virginia). The Metropolitan Washington, DC–MD–VA 1997 annual $PM_{2.5}$ nonattainment area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. The Martinsburg-Hagerstown, WV-MD 1997 annual $PM_{2.5}$ nonattainment area consists of Washington County in Maryland and Berkley County in West Virginia.

EPA previously made clean data determinations related to the 1997 annual $PM_{2.5}$ NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). Determinations were made for the Metropolitan Washington Area, DC-MD-VA on January 12, 2009 (74 FR 1146) and for the Martinsburg-Hagerstown, WV-MD Area on November 20, 2009 (74 FR 60199). These clean data determinations remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its applicable attainment date, and publish that determination in the **Federal Register**. The determination of attainment is not equivalent to a redesignation, and the state must still meet the statutory requirements for

redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified $PM_{2.5}$ air quality monitoring data, recorded in the EPA Air Quality System (AQS) database for 2007–2009, show that the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas attained the 1997 annual $PM_{2.5}$ NAAQS by their applicable attainment date.

On November 4, 2011 (76 FR 68378), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, Maryland, Virginia, and West Virginia. The NPR proposed to determine that the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas have attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period and EPA's determinations are in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664). No comments were submitted on the NPR.

II. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50 and recorded in the data in the EPA AQS database for the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas for the monitoring period from 2007–2009. On the basis of that review, EPA is determining that the Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable April 5, 2010 attainment date.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentrations, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 $\mu g/m^3$, at all relevant monitoring sites. The values calculated in accordance with 40 CFR part 50, appendix N, are referred to as design values, and these values are used to determine if an area is attaining the $PM_{2.5}$ NAAQS. According to the $PM_{2.5}$ implementation rule, the attainment date for these Areas is April 5, 2010 and the monitoring data from 2007–2009 is used to determine if the Areas attained by April 5, 2010.

Table 1 shows the $PM_{2.5}$ design values for each monitor in the Metropolitan Washington, DC–MD–VA and the Martinsburg-Hagerstown, WV–MD nonattainment areas, respectively, for the years 2007–2009. All 2007–2009 design values are below 15.0 $\mu g/m^3$, and all monitors meet the data completeness requirements. Therefore, the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas attained the 1997 annual $PM_{2.5}$ NAAQS by their attainment date.

TABLE 1—1997 ANNUAL $PM_{2.5}$ DESIGN VALUES FOR THE METROPOLITAN WASHINGTON, DC-MD-VA AND MARTINSBURG-HAGERSTOWN, WV-MD AREAS *

State	County	Monitor ID	2007 Annual mean	2008 Annual mean	2009 Annual mean	Certified design value 2007–2009 ($\mu g/m^3$)
Metropolitan Washington, DC-VA-MD						
DC	District of Columbia	110010041	13.6	12.0	10.5	12.0
	District of Columbia	110010042	13.7	12.3	10.1	12.1
	District of Columbia	110010043	13.0	11.6	10.2	11.6
VA	Alexandria	No monitor				
	Arlington	510130020	13.8	12.0	10.1	11.9
	Fairfax	510590030	12.5	11.1	9.8	11.1
	Farifax County	510591005	13.3	11.2	9.5	11.3
	Fairfax	510595001	13.5	11.8	9.7	11.7
	Falls Church	No monitor				
	Loudon	511071005	12.8	11.5	9.2	11.2
	Manassas	No monitor				
	Manassas Park	No monitor				
MD	Charles	No monitor				
	Frederick	No monitor				
	Montgomery	240313001	11.7	10.8	9.4	10.7
	Prince Georges	240330025	14.1	12.4	10.7	12.4
	Prince Georges	240330030	11.8	10.9	8.7	10.5
	Prince Georges	240338003	12.4	11.2	8.8	10.8
Martinsburg-Hagerstown, WV-MD						
WV	Berkley	240430009	12.9	11.8	9.7	11.5
MD	Washington	540030003	15.6	14.2	12.1	14.0

* The data presented in Table 1 are available at *http://www.epa.gov/air/airtrends/values.html.*

III. Final Action

EPA is finalizing the determinations that the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas have attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date (April 5, 2010). These actions meet the requirement pursuant to section 179(c) of the CAA for EPA to make a determination as to whether the Areas attained the standard by the applicable attainment date of April 5, 2010.

Finalizing these actions does not constitute a redesignation of the Areas to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing these determinations does not involve approving maintenance plans for the Areas as required under section 175A of the CAA, nor does it find that the Areas have met all other requirements for redesignation. The designation status of the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD areas remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and EPA acts to redesignate the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD nonattainment areas.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action merely makes attainment determinations based on air quality data and does not impose any additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the determinations of attainment for the Metropolitan Washington, DC-MD-VA and the Martinsburg-Hagerstown, WV-MD $PM_{2.5}$ nonattainment areas may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 27, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. Section 52.475 is added to read as follows:

§ 52.475 Determinations of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Metropolitan Washington, DC-MD-VA nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart V—Maryland

■ 2. Section 52.1082 is added to read as follows:

§ 52.1082 Determinations of attainment.

(a) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Metropolitan Washington, DC-MD-VA nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Martinsburg-Hagerstown, West Virginia-Maryland (WV-MD) fine particle ($PM_{2.5}$)

nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Martinsburg-Hagerstown, WV-MD nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart VV—Virginia

■ 4. Section 52.2430 is added to read as follows:

§ 52.2430 Determinations of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Metropolitan Washington, District of Columbia-Maryland-Virginia (DC-MD-VA) fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Metropolitan Washington, DC-MD-VA $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart XX—West Virginia

■ 5. Section 52.2527 is amended by adding paragraph (e) to read as follows:

§ 52.2527 Determination of attainment.

* * * * *

(e) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Martinsburg-Hagerstown, West Virginia-Maryland (WV-MD) fine particle ($PM_{2.5}$) nonattainment area attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Martinsburg-Hagerstown, WV-MD $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2012–141 Filed 1–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0917; FRL–9616–4]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Alaska State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance program (I/M) for control of carbon monoxide (CO) in Anchorage. The State of Alaska (the State) submitted a September 29, 2010, SIP modification that would discontinue the I/M program in Anchorage as an active control measure in the SIP and shift it to a contingency measure. EPA is approving the submittal because it satisfies the requirements of the Clean Air Act (CAA or the Act).

DATES: This action is effective on February 9, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2010–0917. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel, (206) 553–6121, or by email at *vaupel.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

I. What is the background for this final action?

The I/M program is a CO control measure in the Anchorage CO maintenance plan that was Federally approved on June 23, 2004 (69 FR 34935). The State of Alaska submitted a September 29, 2010, SIP modification discontinuing the I/M program in Anchorage as an active control measure in the SIP and shifting it to a contingency measure. EPA is approving the 2010 submittal because it satisfies the requirements of the CAA.

In accordance with the CAA and EPA redesignation guidance, states may adjust control strategies in the maintenance plan as long as they can demonstrate that the revision will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), or any other CAA requirements. See CAA sections 175A and 110(l). However, section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment.

The SIP revision submitted by Alaska included a technical analysis using EPA approved models and methods to demonstrate that the Anchorage area would continue to maintain the CO standard without the I/M program in place and that the revision would not interfere with attainment and maintenance of the other NAAQS. The submittal also documented that Anchorage will retain the legal authority necessary to implement the I/M program as a contingency measure.

On September 7, 2011, EPA proposed to approve the State's submittal as meeting the requirements of the Act (76 FR 55325). For a more detailed discussion of the background of this rulemaking, please see EPA's notice of proposed approval. In this final action, EPA is approving the SIP modifications to the Anchorage CO maintenance plan as originally proposed in EPA's notice of proposed rulemaking.

II. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA's proposal to approve Alaska's request closed on October 7, 2011. EPA received

128 comments. The following summarizes the issues raised in comments and provides EPA's responses. The majority of comments supported the proposed action to remove the I/M program as an active control measure and move it to the contingency measures portion of the SIP. In general, the comments opposed to the proposed action questioned the wisdom of discontinuing a program that has a beneficial impact on the community. Finally, additional comments suggested that EPA retain the I/M program as an active control measure in the SIP because of air quality benefits received by the program. As discussed in greater detail below, EPA believes that many of these concerns fall outside of the scope of this action.

Comment: A number of commenters attributed the improvement in Anchorage's air quality to the I/M program and expressed concern that air quality in Anchorage would deteriorate once the I/M program is discontinued. Some of these commenters expressed concerns such as ''smoke belcher vehicles'' becoming more common and deteriorating air quality. Other commenters suggested requiring I/M for older vehicles. Two commenters provided information on I/M test failures in Anchorage. One commenter emphasized the importance of maintaining oxygen sensors. This commenter expressed concern that ''the motorist may simply ignore the light [malfunction indicator lamp/check engine light].'' One commenter was concerned that the State's analysis did not include ''removal and modifications or just simple lack of maintenance'' and that it did not ''reflect the rapid growth of [A]nchorage.'' These comments all expressed concern regarding diminished air quality in the absence of the I/M program.

Response: In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet minimum criteria set by the CAA or any applicable EPA regulations. The State's CAA section 110(l) demonstration indicates that motor vehicle emissions are projected to decline from current levels through 2023, even with the discontinuation of the I/M program for all vehicles. In its submittal, the State explains that the analysis was conducted ''[u]sing the best available data and assumptions regarding growth in population, vehicle miles traveled and trip starts'' and that the modeling analysis ''assumes that the CO reductions provided by the I/M Program will be zero in 2011 and beyond.'' In its 2007–2023 emission projections, the State explains that ''[a] great deal of effort was devoted to developing a credible highway motor vehicle emissions inventory that reflected real world conditions and driver behavior in Anchorage.'' The State's projections demonstrate that Anchorage will maintain the CO standard through 2023. The primary driver for the decline in CO emissions is the replacement over time of older vehicles with newer, cleaner running vehicles. In addition, the SIP includes a commitment to analyze air quality data to verify continued attainment of the CO NAAQS (See 69 FR 25872). Anchorage will retain the legal authority necessary to implement the I/M program if needed as a contingency measure under the CO SIP or for reasons unrelated to the requirements of the Federal CAA.

EPA notes that air quality standards are set to protect public health with an adequate margin of safety and EPA has found that approving the State's plan to remove the I/M program as an active control measure in the Anchorage CO maintenance plan will not interfere with attainment or maintenance of the NAAQS. EPA believes that the applicable criteria for approving discontinuation of the I/M program in Anchorage have been met and therefore the revision should be approved.

Comment: A number of comments, both opposing and supporting the proposed action, identified benefits of the I/M program beyond the control of CO and suggested alternatives to the I/M program. Some commenters were concerned about vehicle safety and vehicle modifications. One commenter explained seeing vehicles with ''panels and hoods held together with duct tape, zipties, rivets, ratchet straps, and baleen wire.'' Another commenter was concerned about noise pollution from ''reduced muffler quality.'' Some commenters suggested replacing the I/M program with a safety inspection program. One commenter was concerned about the economic impacts of discontinuing the I/M program as the industry may need to ''lay off some of its work force'' which will have a ''ripple effect'' throughout the Anchorage economy. One commenter who supported the proposal suggested that ''in the spirit of clean air * * * [a] small increase in car registration fees * * * go toward enhancing the city's public transportation.''

Response: EPA recognizes that there may be ancillary benefits in a community that coincide with I/M and transit programs. As noted above, states have primary responsibility for deciding how to attain and maintain the NAAQS. Under the CAA, the sole issue for EPA's consideration in this rulemaking is whether removing the I/M program as an active control measure for CO in the SIP would be consistent with CAA provisions, including whether discontinuation is expected to interfere with attainment and maintenance of air quality standards. EPA is approving removal of the I/M program as an active control measure in the CO SIP because removal is consistent with the requirements of the CAA, including attainment and maintenance of the NAAQS. Many of the alternatives suggested by commenters may be considered and implemented at the local level without EPA's review or approval.

Comment: Two commenters suggested that discontinuation of the I/M program should be immediate and not delayed by 6 months.

Response: The commenters did not provide information identifying the 6-month period they reference. EPA has not imposed a 6-month waiting period on this SIP revision. EPA's approval of the revision to remove the I/M program as an active control measure in the SIP will be effective 30 days after the final rule is published. EPA believes the commenters may be referring to local requirements, in which case the issue is beyond the scope of this action. EPA is acting on the State's submission, which is limited in scope to revisions to the existing SIP for CO. Although Federal approval of the SIP modification is effective within 30 days, local regulators may choose to continue the I/M program after this date for reasons unrelated to Federal CAA requirements.

Comment: One commenter was concerned that the State used the MOBILE6.2 emissions model in its maintenance demonstration rather than using EPA's most recent model, MOVES2010. The commenter ''calls on the EPA to require the State of Alaska to re-submit the proposed rule change relying on MOVES2010 to model emissions in Anchorage, Alaska.'' The commenter expressed concern that after March 2, 2012 (which is the end of the MOVES2010 grace period for transportation conformity analyses), future emissions modeling with MOVES2010 would cause Anchorage to be ''out-of-compliance'' or ''in non-attainment'' for the CO standard and that the I/M program could not be implemented quickly enough at that time to qualify as a contingency measure.

Response: On March 2, 2010, EPA released the MOVES2010 emission model (see 75 FR 9411, March 2, 2010) and explained that ''[a]lthough MOVES2010 should be used in SIP development as expeditiously as

possible, EPA also recognizes the time and effort that States have already undertaken in SIP development using MOBILE6.2. SIPs that EPA has already approved are not required to be revised solely based on existence of the new model. States that have already submitted SIPs or will submit SIPs shortly after EPA's approval of MOVES2010 are not required to revise these SIPs simply because a new motor vehicle emissions model is now available.'' [1] Alaska's MOBILE6 modeling that was used in support of its maintenance demonstration and in developing the motor vehicle emissions budget was completed prior to March 2, 2010. Consistent with EPA's guidance on the topic, EPA finds that Alaska's reliance on that modeling in its SIP submission was appropriate under these circumstances. EPA concludes that this does not constitute a basis for disapproval of the State's SIP proposal.

Regarding the commenter's concern that Anchorage may be ''out-of-compliance'' or ''in non-attainment'' on March 2, 2012, EPA reiterates that SIPs that have already been approved do not need to be revised solely as a result of the availability of the new model. Thus, EPA will not be reevaluating its approval of this SIP revision after March 2, 2012.[2] Furthermore, to the extent the commenter is suggesting that Anchorage will be out of compliance with the NAAQS on March 2, 2012, and subsequently designated nonattainment, EPA notes that compliance with the CO standard in Anchorage will continue to be based on air quality monitoring values. The end of the MOVES2010 grace period on March 2, 2012, does not relate to the attainment status of the area.

The commenter also expressed concern that the I/M program does not qualify as a contingency measure because of the length of time it would take to implement the program after it has been discontinued. EPA notes that the contingency plan in the Anchorage CO SIP includes six contingency measures available to the State with a schedule indicating the time necessary to implement each contingency measure. The implementation times range from 6 to 24 months and the State projected it would take 12 to 24 months to reinstate the I/M program if that measure were selected. The State's contingency plan explains that, ''[i]n the event monitoring data indicate that a violation of the ambient CO standard has occurred, Anchorage would examine the data to assess the spatial extent (*i.e.,* hot spot versus region), severity and time period of the episode as well as trends over time. Based on this information, Anchorage, in consultation with ADEC [Alaska Department of Environmental Conservation], would determine which measure or measures in Table III.B.7–1 to implement.'' CAA section 175A(d) of the Act requires that a maintenance plan include such contingency provisions, as EPA deems necessary, to promptly correct any violation of the standard which occurs after the redesignation of the area. Thus, Congress gave EPA discretion to evaluate and determine the contingency measures EPA ''deems necessary.'' EPA has long exercised this discretion in its rulemakings on CAA section 175A contingency measures in maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation within 18–24 months of a violation complies with the requirements of section 175A. EPA has properly determined here that the State's contingency measures and schedules for implementation satisfy the CAA's contingency plan requirements.

Comment: One commenter was concerned about funding for air quality monitoring. The commenter explained that air quality monitoring in the Municipality of Anchorage is funded by the I/M program and an alternate source of funding has not been identified.

Response: EPA acknowledges that a portion of Anchorage's air quality monitoring program has historically been funded by revenue generated by the I/M program. However, Anchorage has recently passed a budget that provides funding to support continuation of its air quality monitoring program. Accordingly, EPA concludes that termination of the I/M program as an active SIP control measure will not prevent Alaska from having adequate resources to implement its SIP.

III. What action is EPA taking?

EPA is approving revisions to the Alaska SIP that will remove the I/M program as an active control measure for CO in the SIP and move it to the contingency measures portion of the SIP. For the reasons provided above and in our September 7, 2010, proposed rule, we are approving Alaska's SIP revision that removes the I/M program as an active control measure for CO in Anchorage and moves it to the contingency measures portion of the SIP as originally proposed.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

[1] EPA believes that this is supported by existing EPA policies and case law [*Sierra Club* v. *EPA,* 356 F.3d. 296, 307–08 (DC Cir. 2004)].'' *(Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes,* December 2009, EPA–420–B–09–046)

[2] EPA notes that the State has subsequently submitted on September 20, 2011, another CO SIP revision for Anchorage that includes a re-analysis of the maintenance demonstration and motor vehicle emission budget with the MOVES model. For EPA's review of the whether the motor vehicle emissions budget in the SIP is adequate for conformity purposes, see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#anch-ala.* EPA's preliminary review of this submission indicates that Alaska's MOVES modeling does not contain information indicating that the area may not be able to maintain the CO NAAQS throughout the maintenance period. EPA will complete its review of this latest SIP submittal and commence notice and comment rulemaking on that submittal in the near future.

application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 28, 2011.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

■ 2. Section 52.73 is amended by adding paragraph (a)(1)(ii) to read as follows:

§ 52.73 Approval of plan.

(a) * * *

(1) * * *

(ii) EPA approves as a revision to the Alaska State Implementation Plan, the Anchorage Carbon Monoxide Maintenance Plan (Volume II Sections II, III.A and III.B of the State Air Quality Control Plan adopted August 20, 2010, effective October 29, 2010, and Volume III of the Appendices adopted August 20, 2010, effective October 29, 2010) submitted by the Alaska Department of Environmental Conservation on September 29, 2010

* * * * *

[FR Doc. 2012–341 Filed 1–9–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0723; FRL–9616–5]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or SJV) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 9, 2011 and concerns SJVUAPCD's ''Reasonably Available Control Technology (RACT) Demonstration for Ozone SIP'' (RACT SIP) for the 8-hour ozone National Ambient Air Quality Standard. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to correct RACT rule deficiencies in the SJV.

DATES: *Effective Date:* This rule is effective on February 9, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0723 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action

On September 9, 2011 (76 FR 55842), EPA proposed to partially approve and partially disapprove the following document that was submitted for incorporation into the California SIP.

Local agency	Document	Adopted	Submitted
SJVUAPCD	Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP).	04/16/2009	06/18/2009

In our proposed action we divided SJVUAPCD's rules into the following categories and evaluated each rule for compliance with RACT requirements.

Group 1: Rules that EPA recently approved or proposed to approve as implementing RACT.

Group 2: Rules previously approved for which we are not aware of more stringent controls that are reasonably available.

Group 3: Rules that EPA has disapproved or proposed to disapprove, in full or in part, because SJVUAPCD's has failed to demonstrate they fully satisfy current RACT requirements.

Group 4: Rules for which EPA has not yet made a RACT determination.

We proposed to approve those elements of SJVUAPCD's RACT SIP demonstration that pertain to the SIP rules identified in groups 1 and 2, which EPA has fully approved or proposed to approve as satisfying the RACT requirements of CAA sections 182(b)(2) and (f).

Simultaneously, we proposed to disapprove those elements of the RACT SIP demonstration that pertain to the SJVUAPCD rules identified in group 3, which EPA has either disapproved or proposed to disapprove in whole or in part, for failure to satisfy RACT requirements, and those elements of the RACT SIP demonstration that pertain to the rules in group 4, for which EPA has not yet made a RACT determination.

Our technical support document for our proposed action stated that a revised RACT SIP demonstration would not be necessary if each SIP submittal for the rules in groups 3 and 4 contains the necessary supporting analyses to demonstrate the rule meets RACT.

Specifically, we proposed to partially disapprove SJVUAPCD's RACT SIP demonstration because seven rules did not fully satisfy current RACT requirements. We have since approved three of the rules and are awaiting SIP submittals for the remaining four rules. The seven rules were:

1. Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heaters—final limited approval/disapproval October 1, 2010 (*75 FR 60623*). SJVUAPCD is scheduled to adopt amendments to Rule 4352 on December 15, 2011.

2. Rule 4401—Steam Enhanced Crude Oil Production Wells—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on July 28, 2011 and EPA approved them into the SIP on November 16, 2011, (*76 FR 70886*).

3. Rule 4402—Crude Oil Production Sumps—final limited approval/disapproval July 7, 2011 (*76 FR 39777*). SJVUAPCD is scheduled to adopt amendments to Rule 4402 on December 15, 2011.

4. Rule 4605—Aerospace Assembly and Component Coating Operations—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on July 28, 2011 and EPA approved them into the SIP on November 16, 2011, (*76 FR 70886*).

5. Rule 4625—Wastewater Separators—final limited approval/disapproval July 7, 2011 (*76 FR 39777*). SJVUAPCD is scheduled to adopt amendments to Rule 4625 on December 15, 2011.

6. Rule 4682—Polystyrene, Polyethylene, and Polypropylene Products Manufacturing—proposed disapproval July 15, 2011, (*76 FR 41745*). SJVUAPCD is scheduled to adopt amendments to Rule 4682 on December 15, 2011.

7. Rule 4684—Polyester Resin Operations—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on August 26, 2011 and EPA approved them on November 18, 2011 (awaiting publication).

We also proposed to partially disapprove the RACT SIP because we had not yet made RACT determinations for the following three rules identified under group 4:

1. Rule 4566—Organic Material Composting Operations—adopted August 18, 2011 and submitted to EPA on November 18, 2011.

2. Rule 4694—Wine Fermentation and Storage Tanks—amendments adopted August 18, 2011 and submitted to EPA on November 18, 2011.

3. Fumigant Volatile Organic Compound Regulations—California Department of Pesticide Regulation—submitted August 2, 2011. EPA is currently reviewing the submittal.

Our proposed rule contains more information on the basis for this rulemaking and on our evaluation of the RACT SIP demonstration.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

Paul Cort, Earthjustice; letter dated October 11, 2011 and received October 11, 2011.

We have summarized the comments and provided responses below.

Comment #1:

Earthjustice asserts that EPA's analysis of SJVUAPCD's RACT SIP demonstration fails to satisfy Clean Air Act requirements and largely excuses the District's ''continued refusal to adopt the controls necessary to meet the ozone standards in the Valley.'' Referencing sections 172(c)(1), 182(b)(2) and 182(f) of the CAA as the provisions governing this action, Earthjustice asserts that the requirement in section 172(c)(1) is not limited to ''major sources'' and that ''[o]nly section 182 mentions the need to provide for RACT for all major stationary sources.'' Earthjustice quotes from EPA's 1992 General Preamble (57 FR 13498, 13541 (April 16, 1992)), in which EPA states that it ''recommends that a State's control technology analyses for existing stationary sources go beyond major stationary sources in the area and that States require control technology for other sources in the area that are reasonable in light of the area's attainment needs and the feasibility of such controls,'' and asserts that this language represents EPA's interpretation of the ''interplay'' of CAA sections 172(c)(1), 182(b)(2), and 182(f). Finally, Earthjustice argues that EPA's review of SJVUAPCD's RACT demonstration does not recognize ''the extreme attainment needs for the Valley'' and that ''[i]t is not possible to make the RACT demonstration for the Valley without explaining what is needed to attain the ozone standards in the Valley and using this attainment need to justify the thresholds used to accept or eliminate available control options.''

Response #1:

We disagree with Earthjustice's characterization of the CAA requirements that apply to our evaluation of the RACT SIP for SJV. As explained in our proposed rule and our August 29, 2011 Technical Support Document for our proposed action on the RACT SIP (''2011 RACT SIP TSD''), California submitted the SJV RACT SIP to meet the RACT requirements of subpart 2, part D of title I of the CAA (sections 182(b) and 182(f)), and EPA therefore evaluated the submittal in accordance with those requirements. *See* 76 FR 55842 at 55844 (September 9, 2011) and 2011 RACT SIP TSD at 2–9 and 34–35.

Prior to the 1990 Amendments to the CAA, all nonattainment areas were subject to the nonattainment planning provisions of section 172. Under section 172, the RACT requirement and the attainment demonstration are addressed in the same subsection. Specifically, section 172(c)(1) of the Act requires that the SIP for each nonattainment area ''shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for the attainment of the national primary ambient air quality standards.'' As part of the 1990 Amendments, Congress created specific nonattainment area planning requirements for ozone. In section 182(b)(2) of the Act, Congress

required States with areas classified as moderate and above to submit a RACT SIP within two years.[1] Separately, in sections 182(b)(1)(A) and (c)(2)(A), Congress required States to submit attainment demonstrations within three years for moderate areas and within four years for serious and above areas. Where these more specific planning obligations apply, we interpret them to supplant the similar, but less specific, obligations in section 172. Furthermore, because Congress expressly separated the RACT requirement from the attainment demonstration obligation, EPA has treated the RACT requirement as a technology-based requirement that is separate from the attainment demonstration obligation.[2] The RACT requirement in CAA section 182 is a control mandate that applies independent of the emission reductions needed for attainment. *See, e.g.,* EPA's Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard, 68 FR 32802 at 32837 (June 2, 2003) (explaining that ''[u]nder subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard''). However, as we have explained, Congress did not supplant the more general requirement for areas to demonstrate they have adopted ''reasonably available control measures'' (RACM) consistent with section 172(c)(1) and we have required States to address RACM as a component of the area's attainment demonstration. 57 FR 13498 at 13560 (April 16, 1992) (1992 General Preamble); *see also* 40 CFR 51.912(d) (requiring States to submit with the attainment demonstration (where required) for an ozone nonattainment area ''a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements'').

Thus, at this time, we are reviewing only the RACT demonstration submitted by the State to determine whether it meets the technology-based requirements of section 182(b)(2). Earthjustice quotes from a portion of EPA's 1992 General Preamble that discusses CAA RACT requirements, but that discussion addresses the subpart 1 RACT/RACM requirement in CAA section 172(c)(1), not the more specific RACT control mandate in CAA section 182(b)(2). *See* 57 FR 13498 at 13541 (April 16, 1992) (referencing CAA section 172(c)(1) in support of statement that RACT applies to ''existing sources''). To the extent the commenters have concerns about whether there are additional ''reasonably available'' controls that are necessary to attain the 1997 8-hour ozone standard, the State is required to address that issue in the context of the RACM analysis submitted with its attainment demonstration for that standard. In a separate action, EPA has proposed to approve the SIP submitted by California to provide for attainment of the 1997 8-hour ozone NAAQS in the SJV area (SJV 2007 Ozone Plan). *See* 76 FR 57846 at 57850–57853 (September 16, 2011). As part of that action, EPA will determine whether the SJV 2007 Ozone Plan satisfies the CAA section 172(c)(1) requirement to implement all RACT/RACM necessary for expeditious attainment of the 1997 8-hour ozone NAAQS in the SJV.

We note that our approach to evaluating the RACT SIP under CAA section 182 as a discreet SIP element is consistent with EPA's actions on RACT SIPs for the 1997 8-hour ozone NAAQS in other nonattainment areas. *See, e.g.,*73 FR 76947 (December 18, 2008) (final rule approving CAA section 182 RACT SIP for Los Angeles-South Coast, California); 73 FR 78192 (December 22, 2008) (final rule approving CAA section 182 RACT SIP for Virginia); 74 FR 18148 (April 21, 2009) (final rule approving CAA section 182 RACT SIP for Ventura County, California); and 74 FR 22837 (May 15, 2009) (final rule fully approving RACM analysis but conditionally approving CAA section 182 RACT SIP for New Jersey).

We further note that contrary to the implication of the comment, section 182 does not limit RACT to ''major sources.'' Rather, States are required to adopt RACT rules for all sources covered by a control technique guideline (CTG) and many CTGs apply to sources smaller than major sources. In addition to addressing all sources covered by a CTG, States are also required to adopt RACT rules for ''major stationary sources.'' [3]

Comment #2:

Earthjustice asserts that EPA or the District must explain why options for controlling sources beyond major sources have not been considered. Earthjustice references portions of EPA's 2011 RACT SIP TSD that discuss six specific SJVUAPCD regulations (Rules 4106, 4601, 4652, 4692, 4902, and 4905) and states that EPA cannot ''avoid RACT review'' for these rules that regulate non-major sources.

Response #2:

As provided above, the State submitted the RACT SIP to meet the requirements in section 182(b)(2) and (f), which requires VOC RACT for all sources subject to a CTG and all major VOC sources and requires NO_X RACT for all major sources of NO_X. The portions of EPA's 2011 RACT SIP TSD referenced by Earthjustice discuss six specific SJVUAPCD regulations that were not submitted to meet the CAA section 182 RACT requirement: Rule 4106 (Prescribed Burning and Hazard Reduction Burning); Rule 4601 (Architectural Coatings); Rule 4652 (Coatings and Ink Manufacturing); Rule 4692 (Commercial Charbroiling); Rule 4902 (Residential Water Heaters); and Rule 4905 (Natural Gas-Fired, Fan-Type Residential Central Furnaces). As explained in the 2011 RACT SIP TSD, these rules are not subject to the CAA section 182 RACT control mandate because they do not apply to any CTG source category or any major stationary source of VOC or NO_X. *See* 2011 RACT SIP TSD at 12–13. Therefore, evaluation of these rules is not a necessary element of our action on the RACT SIP.

In a separate action on the SJV 2007 Ozone Plan, EPA is currently evaluating whether the State and District have adopted all RACM (including RACT) necessary for expeditious attainment of the 1997 8-hour ozone standard in the Valley, as required by CAA section 172(c)(1). 76 FR 57846 at 57850–57853 (September 16, 2011). The evaluation of potentially reasonable control options for sources not subject to the RACT control mandate in CAA section 182

[1] For the 1997 8-hour ozone standard, EPA's regulations required States to submit the RACT SIP within 27 months after designation as nonattainment for the 1997 8-hour ozone standard. 40 CFR 51.912(a)(2).

[2] For example, see 40 CFR 51.918 and Memorandum dated May 10, 1995, from John S. Seitz, Director, EPA, Office of Air Quality Planning and Standards, to Air Division Directors, EPA, Regions I–X, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (explaining that certain SIP requirements related to attainment of the NAAQS may be suspended if an ozone nonattainment area subject to those requirements is in fact attaining the ozone standard but stating that this interpretation of the Act does not extend to ''requirements of subpart 2 that are not linked by the language of the Act with the attainment demonstration and RFP requirements,'' such as VOC RACT).

[3] Section 182(b)(2) of the CAA mandates that each State with an ozone nonattainment area classified as moderate or above under subpart 2 submit a SIP revision providing for the implementation of RACT with respect to three specific types of sources: (1) Each category of VOC sources in the area covered by a Control Techniques Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) all VOC sources in the area covered by any CTG issued before November 15, 1990; and (3) all other ''major stationary sources'' of VOC located in the area. Section 182(f) provides that the requirements for major stationary sources of VOC under subpart 2 shall also apply to major stationary sources of NO_X.

belongs in the context of this broader evaluation of the 8-hour ozone attainment demonstration for the SJV area. EPA is not ''avoiding'' review for these other source categories but, rather, appropriately evaluating these additional control options as part of our separate action on the RACM and attainment demonstration under section 172(c)(1) and section 182(c)(2).

Comment #3:

Earthjustice asserts that ''EPA cannot acknowledge feasible control options that have been left out of District rules and excuse this failure without explaining why these options are not necessary for attainment.'' In particular, Earthjustice references portions of EPA's 2011 RACT SIP TSD discussing four specific SJVUAPCD regulations (Rules 4320, 4354, 4606, and 4624) and asserts that EPA has provided ''no numbers or any suggestion that it has actually evaluated the potential emission reductions achievable'' by these rules. Earthjustice also asserts that ''[c]onclusory claims that tighter controls would not provide significant emission reductions need to be supported.'' Finally, Earthjustice questions what is ''significant'' in ''an area that currently has no actual strategy for meeting the ozone standards,'' what the cumulative effect of these potential rule improvements would be, and whether emission reductions might be significant if the rules applied to non-major sources.

Response #3:

With respect to Earthjustice's assertion that EPA must consider the SJV area's attainment needs and the cumulative effect of potential rule improvements as part of our action on the RACT SIP, we disagree for the reasons provided in Response #1 above. As to Earthjustice's statement about the need to support ''[c]onclusory claims that tighter controls would not provide significant emission reductions,'' we agree generally that a RACT evaluation should include adequate support for rejection of any control option based on the cost of and amount of incremental emission reductions it would achieve.[4] We disagree, however, that either EPA's or the District's RACT analyses are ''conclusory.'' As explained in the 2011 RACT SIP TSD, our evaluation of the RACT SIP was based on multiple sources of information about potentially available control options, including: (1) The District's SIP submittals for specific rules, including public comments and the District's responses to those comments; (2) the District's RACT analysis in the April 16, 2009 RACT SIP; and (3) EPA's previous rulemaking action on each rule, including public comments and EPA's responses to those comments. Our 2011 RACT SIP TSD references each of the documents we relied upon and adequately supports our conclusions with respect to each of the District rules we evaluated as part of the RACT SIP.

In support of its challenge to EPA's evaluation of the RACT SIP, Earthjustice refers generally to statements in EPA's 2011 RACT SIP TSD identifying issues that EPA considered with respect to four specific SJVUAPCD rules (Rules 4320, 4354, 4606, and 4624). For the most part, these portions of the 2011 RACT SIP TSD summarize issues that EPA considered as part of its recent actions on these rules. *See* 2011 RACT SIP TSD at 14, 17, and 19 (referencing previous EPA rulemaking actions on Rules 4320, 4606, and 4624). However, some portions of the 2011 RACT SIP TSD referenced by Earthjustice describe additional information that EPA considered as part of its evaluation of the RACT SIP. *See* 2011 RACT SIP TSD at 15 (referencing, with respect to Rule 4354, previous EPA rulemaking action and SJVUAPCD's statements in RACT SIP demonstration). We note as a threshold matter that Earthjustice's generalized assertions fail to identify any specific deficiency in any of these rules or to provide any new information that EPA did not evaluate in our previous rulemaking actions. A commenter bears the burden of bringing to an agency's attention at least some particulars of an alleged defect in a rulemaking. *See International Fabricare Inst.* v. *EPA,* 972 F. 2d 384, 391 (DC Cir. 1992). Nonetheless, in response to these comments, we have conducted further evaluation of Rules 4320, 4354, 4606, and 4624 and discuss these evaluations below. For the reasons provided in our 2011 RACT SIP TSD, as further discussed in the previous rulemaking actions referenced therein and as further explained below, we disagree with Earthjustice's assertion that EPA has failed to explain the bases for our approvals with respect to these particular source categories.

Comment 3a (Rule 4320—Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates more stringent control options for this rule are available but fails to explain why these options should not be required for all sources as RACT.

Response 3a:

We did not propose to approve Rule 4320 as satisfying RACT under CAA section 182. In the Technical Support Document for EPA's proposed action on this rule (75 FR 68294, November 5, 2010), EPA stated that section 5.3.3 of Rule 4320, which requires operators of units for which annual fees are paid to ''certify that the units meet federal RACT control measures at the time the annual fee is provided,'' is not sufficient to ensure implementation of RACT by covered sources. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District's Rule 4320, Advanced Emission Reduction Options for Boilers, Steam Generators and Process Heaters Greater than 5.0 MMbtu/hr,'' August 19, 2010 (Rule 4320 TSD).[5] EPA also noted, however, that EPA had approved Rule 4306 as satisfying RACT for this source category. *See* Rule 4320 TSD at 6 (referencing 75 FR 1715, January 13, 2010) (final rule approving Rule 4306). EPA further explained that ''[b]ecause sources have a separate obligation to comply with Rule 4306 (which does not allow payment of fees in lieu of compliance), the necessary regulatory framework is in place to ensure that RACT will be implemented for this source category'' and that ''[i]f, in the future, the District intends to rely on Rule 4320 to implement RACT, the District would need to modify Rule 4320 to delete the provision which allows sources to pay fees in lieu of compliance or otherwise ensure RACT implementation.'' Rule 4320 TSD at 6. Accordingly, we noted in our 2011 RACT SIP TSD that ''EPA approved Rule 4320 only as SIP-strengthening (not as meeting RACT) but determined that the source category covered by this rule is subject to RACT requirements under SIP-approved Rule 4306.'' 2011 RACT SIP TSD at 14.

Moreover, we disagree with the comment that EPA's 2011 RACT SIP TSD indicated more stringent control options were available under Rule 4320. EPA's 2011 RACT SIP TSD simply noted that EPA had not approved Rule 4320 as satisfying RACT requirements because of the option it provided to pay fees in lieu of compliance with control requirements. *See* 2011 RACT SIP TSD

[4] EPA explained in the preamble to the Phase 2 Ozone Rule that where the incremental emission reductions that would result from application of a particular control option are small, the costs necessary to achieve that small additional increment of reduction may not be ''reasonable.'' *See* 70 FR 71612, 71654 (November 29, 2005). In contrast, a RACT analysis for uncontrolled sources would more likely result in a conclusion that RACT level controls are economically and technically feasible. *Id.*

[5] *See also* Final rule, 76 FR 16696 (March 25, 2011) (approving Rule 4320 as SIP-strengthening but noting that the rule is not consistent with EPA guidance on economic incentive programs).

at 14. We note that the SJVUAPCD's supporting documentation for Rule 4320 did include evaluation of alternative NOx RACT requirements that the State rejected as not economically feasible (*see* SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4306, Proposed Amendments to Rule 4307, and Proposed New Rule 4320 (October 16, 2008) at 11, 17, and Appendix C), and the commenter submits no substantive claims to rebut the State's conclusion. We are not, however, making any determination in this action as to the stringency of the NOx requirements in Rule 4320 given our previous conclusion that Rule 4306 adequately implements NOx RACT for this source category.

Comment 3b (Rule 4354—Glass Melting Furnaces):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates more stringent glass melting furnace limits have been adopted in the Bay Area but fails to explain why the Bay Area's limits are not reasonable for SJV other than the fact that the Bay Area has not implemented them.

Response 3b:

EPA approved Rule 4354 (as amended September 16, 2010) on August 29, 2011 as satisfying RACT under CAA section 182. *See* 76 FR 53640. As explained in the Technical Support Document for our proposed action on this rule (76 FR 30744, June 24, 2011), our approval was based on our evaluation of several sources of information, including EPA's 1994 Alternative Control Techniques (ACT) Document for Glass Manufacturing, EPA's RACT/BACT/LAER Clearinghouse (RBLC),[6] emission limits in 40 CFR part 60 (Standards of Performance for New Stationary Sources) and part 63 (National Emission Standards for Hazardous Air Pollutants), and several analogous State/local rules. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District's Rule 4354, Glass Melting Furnaces,'' June 2011 (Rule 4354 TSD at 3). In response to Earthjustice's comment about the Bay Area Air Quality Management District's (BAAQMD's) NO_X limit for glass melting operations, however, we have further evaluated BAAQMD Regulation 9, Rule 12 (Nitrogen Oxides from Glass Melting Furnaces) and compared it to Rule 4354.

BAAQMD Regulation 9, Rule 12 contains a single NO_X limit of 5.5 lbs of NO_X per short ton of glass pulled from ''any glass melting furnace.'' *See* BAAQMD Rule 9–12–301 (as adopted January 19, 1994). The January 7, 1994 staff report for Regulation 9, Rule 12 indicates that the BAAQMD developed the NO_X limit in this rule to apply specifically to three container glass facilities in the Bay Area and does not indicate this NO_X limit was feasible for flat glass melting operations. *See* BAAQMD, ''Staff Report, Proposed Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces,'' January 7, 1994, at 1 (stating that ''[t]he proposed rule would affect three Bay Area container glass plants operating a total of five furnaces * * *''). To date, EPA is not aware of any flat glass melting facility that has operated in the Bay Area and thus been subject to the NO_X emission limit in BAAQMD Regulation 9, Rule 12 (5.5 lbs of NO_X per short ton of glass pulled). *See* email dated October 27, 2011, from Julian Elliot (BAAQMD) to Stanley Tong (EPA Region 9), RE: Glass plants in BAAQMD. We also note that container glass furnaces generally emit NO_X at lower levels compared to flat glass furnaces. *See* EPA's Compilation of Air Pollutant Emission Factors, AP–42 Fifth Edition, Volume I, Chapter 11, at Table 11.15–1 (identifying NO_X emission factors of 3.3 to 9.1 lbs of NO_X per ton of glass for container glass furnaces and emission factors of 5.6 to 10.4 lbs of NO_X/ton of glass for flat glass furnaces). Thus, we do not have information indicating that any flat glass melting furnaces are located in the Bay Area and are subject to and meeting the NO_X limit in BAAQMD Regulation 9, Rule 12.

At the time the SJVUAPCD adopted its 2009 RACT SIP demonstration (on April 16, 2009), this NO_X limit in BAAQMD Rule 9–12–301 was more stringent than the NO_X limits in SJVUAPCD Rule 4354 (as adopted August 17, 2006) for flat glass melting operations, which ranged from 7.0 to 9.2 lbs of NO_X per ton of flat glass, depending on the averaging period. On September 16, 2010, however, the SJVUAPCD adopted successive tiers of more stringent NO_X limits for flat glass melting operations, including a NO_X limit equivalent to the limit in BAAQMD's Regulation 9, Rule 12. Specifically, the revised Rule 4354 established new ''Tier 3'' NO_X emission limits, which reduced the earlier rule's Tier 2 limits of 9.2 lbs of NO_X per ton of flat glass (24-hour average) and 7.0 lbs of NO_X per ton (30-day average) to 5.5 and 5.0 lbs of NO_X per ton of flat glass, respectively, effective January 1, 2011. *See* Rule 4354 (as amended September 16, 2010), section 7.2.1.1. These amendments to Rule 4354 also provide flat glass melting facilities with an ''enhanced'' compliance option which grants them a temporary reprieve from the Tier 3 limits (*i.e.,* allowing them to continue complying with the Tier 2 limits) if the facilities comply with the more stringent ''Tier 4'' NO_X limits either by January 1, 2014 (four years earlier than the required compliance date of January 1, 2018) or by the next furnace rebuild schedule, whichever is earlier. *See* Rule 4354, section 7.2.2.3.[7] Thus, SJVUAPCD's Rule 4354, as revised September 16, 2010, now contains the same NO_X emission limit for flat glass melting facilities (effective January 1, 2011) as applied to the three container glass melting facilities in the Bay Area.[8] EPA approved these revisions to Rule 4354 into the California SIP on August 29, 2011. *See* 76 FR 53640. We believe the limited option for delayed compliance under section 7.2.2.3 of Rule 4354 is reasonable, given current uncertainty about the feasibility of a 5.5 lb/ton NO_X limit for flat glass melting furnaces, and given the requirement to meet even lower NO_X limits under the ''Tier 4 early enhanced option'' by the next furnace rebuild and no later than January 1, 2014 (see fn. 8 and accompanying text, above).

Comment 3c (Rule 4606—Wood Products and Flat Wood Paneling Products Coating Operations):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates Rule 4606 ''includes less stringent requirements'' but fails to explain why strengthening the rule would not be reasonable.

Response 3c:

EPA approved Rule 4606 (as amended October 16, 2008) on October 15, 2009 as satisfying RACT under CAA section 182. *See* 74 FR 52894. In the Technical Support Document for our proposed action on this rule (74 FR 33399, July 13, 2009), we noted that Rule 4606 exempts refinishing, replacement and custom replica furniture operations from VOC control requirements, while the CTG for this source category (''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations, EPA–453/R–

[6] EPA's RACT/BACT/LAER Clearinghouse is available at: *http://cfpub.epa.gov/RBLC/.*

[7] The ''Tier 4'' NO_X limits in the rule are 3.4 lbs/ton of glass (block 24-hour average) and 2.9 lbs/ton of glass (rolling 30-day average). *See* Rule 4354 (as amended September 16, 2010), section 5.1, Table 1.

[8] In the 2011 RACT SIP TSD, we stated that the District had compared its rule with BAAQMD Regulation 9 Rule 12 and ''indicate[d] that although [Bay Area's] NO_X limits are more stringent than Rule 4354 for flat glass, [Bay Area] staff verified there are no flat glass furnaces operating within the Bay Area.'' 2011 RACT SIP TSD at 16. In response to these comments, we are revising our evaluation of Rule 4354 to take into account the September 16, 2010 revisions to the rule, which strengthened its NO_X emission limits.

96–007'' April 1996 (1996 Wood Furniture CTG)) does not contain such an exemption. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District, Rule 4606, Wood Products and Flat Wood Paneling Product Coating Operations,'' June 2009 (Rule 4606 TSD), at 3–4. We also noted that a few requirements for wood coatings are more stringent in other areas. *See* Rule 4606 TSD at 4. In response to Earthjustice's comment, we have further evaluated the VOC limits in Rule 4606 and compared them to CTG recommendations and limits in other California air district regulations.

First, with respect to the exemption in Rule 4606 for refinishing, replacement and custom replica furniture operations, this is not a RACT deficiency because the only operations of this type in the SJV have combined potential VOC emissions well below the 1996 Wood Furniture CTG's applicability threshold. The 1996 Wood Furniture CTG provides recommendations for control of VOC emissions from wood furniture coating and cleaning operations located at a manufacturing site. *See* 1996 Wood Furniture CTG at 1–2, 7–3 and Appendix B at B–1 and B–2. The guidance applies to affected sources in extreme ozone nonattainment areas that potentially emit at least 10 tons per year (tpy) of VOC. *Id.* at 7–4. Rule 4606 exempts refinishing, replacement, and custom replica furniture operations from VOC control requirements, but only two such facilities operate in the SJV area and their combined VOC emissions are well below 10 tons per year. *See* Rule 4606 TSD at 4.[9] Because VOC emissions from these facilities are well below the major source and CTG applicability threshold of 10 tpy, section 182 RACT does not apply to these two facilities. We agree, however, that additional VOC reductions could be achieved from wood refinishing, replacement and custom replica furniture operations in the SJV and recommended that SJVUAPCD consider adopting limits for these operations in the next revision of Rule 4606. *See* Rule 4606 TSD at 4.

Second, as to the statement in the Rule 4606 TSD that some requirements in other areas are more stringent than Rule 4606, we have reviewed several other California air district rules and do not have sufficient information to conclude that more stringent controls for this source category are reasonably available for implementation in the SJV. *Id.* According to SJVUAPCD's final staff report for Rule 4606, Ventura County APCD (VCAPCD) has a VOC limit for sanding sealers of 240 grams/liter (*see* VCAPCD Rule 74.30 as amended June 27, 2006, section B.1), which is lower than the limit of 275 grams/liter in SJVUAPCD's Rule 4606 (*see* SJVUAPCD Rule 4606 section, 5.1), and San Diego APCD (SDAPCD) has two rules containing a VOC limit for surface preparation and paint stripping operations of 200 grams/liter (*see* SDAPCD Rules 67.11 and 67.11.1, as adopted September 25, 2002, sections (d)(5) and (d)(3), respectively), which is lower than the limit of 350 grams/liter in SJVUAPCD's Rule 4606 (*see* SJVUAPCD Rule 4606, section 5.1). *See* SJVUAPCD, Final Staff Report, ''Proposed Amendments to: Rule 4603 (Surface Coating of Metal Parts and Products), Rule 4606 (Wood Products Coating Operations), October 16, 2008, Appendix A at A–2 and A–3. On further investigation, it is not clear that the VOC limits for these wood coating categories in the Ventura and San Diego rules are actually achievable by the application of reasonably available controls. The VOC limits in SJVUAPCD Rule 4606 are equivalent to analogous requirements in several other California regulations that we have evaluated (*see, e.g.,* SCAQMD Rule 1136 (as amended June 14, 1996), BAAQMD Regulation 8, Rule 32 (as amended August 5, 2009), and Sacramento Metropolitan AQMD (SMAQMD) Rule 463 (as amended September 25, 2008)), and Earthjustice has provided no information to support a conclusion that the SJVUAPCD has failed to adequately evaluate additional controls for wood coating operations that are reasonably available.

Specifically, according to staff at the VCAPCD, the 240 grams/liter limit for wood sealers in VCAPCD Rule 74.30 was based on a prior version of SCAQMD Rule 1136 from the mid-1990s. *See* email dated October 31, 2011, from Stan Cowen (VCAPCD) to Stanley Tong (EPA Region 9), RE: Wood Coating Rule 74.30. In 1996, however, SCAQMD amended Rule 1136 to increase the sealer limit from 240 grams/liter up to 275 grams/liter and extended the compliance date from 1996 to 2005. *See* SCAQMD Rule 1136 (as amended June 14, 1996), at section (c)(1)(A)(i). EPA approved these revisions to SCAQMD Rule 1136 into the California SIP on August 18, 1998 (63 FR 44132). The VOC limit in SJVUAPCD's Rule 4606 for wood sealers (275 g/l) is equivalent to the limits in SCAQMD Rule 1136 (as amended June 14, 1996), and several other California ozone nonattainment areas have also adopted VOC limits of 275 grams/liter or higher for these types of wood coatings. *See, e.g.,* BAAQMD Regulation 8, Rule 32 (as amended August 5, 2009) at section 8–32–302 and Sacramento SMAQMD Rule 463 (as amended September 25, 2008) at section 302. Although VCAPCD's Rule 74.30 continues to require a VOC limit of 240 grams/liter for wood sealers, this is the only regulation we know of that contains a limit this low, and we do not have information indicating that wood sealers can generally meet a 240 grams/liter limit by the application of reasonably available controls.[10] Given at least one district has adopted a limit of 240 grams/liter and at least one large manufacturer sells wood sealers that apparently can meet a 240 grams/liter limit, we encourage the SJVUAPCD to reevaluate Rule 4606 at the next opportunity to ensure that it requires all controls for wood sealers that are reasonably available for implementation in the SJV. At this time, however, we believe the limits in Rule 4606 for wood sealers meet RACT under CAA section 182 for the 1997 8-hour ozone standard.

Similarly, the VOC limit in SJVUAPCD's Rule 4606 for paint strippers (350 g/l) is equivalent to or more stringent than the limits for this category of wood coatings in most other California nonattainment areas. *See, e.g.,* SCAQMD Rule 1136 (as amended June 14, 1996), at section (c)(1)(B); SMAQMD Rule 463 (as amended September 25, 2008), at section 304; VCAPCD Rule 74–30 (as amended June 27, 2006), at section B.3. The only California district rules we know of that contain lower limits for paint strippers are SDAPCD's Rule 67.11 (''Wood Products Coating Operations'') and Rule 67.11.1 (''Large Coating Operations for Wood Products''), both of which prohibit the use of VOC containing

[9] The combined VOC emissions from these two facilities amount to approximately 1 ton per year. *See* SJV RACT SIP at 4–210.

[10] EPA contacted two manufacturers that sell wood sealers in California and learned that only one of them, Sherwin Williams, makes a water-based sealer that meets a 240 grams/liter limit. *See* email dated November 3, 2011, from Matt Collins (The Sherwin-Williams Company) to Stanley Tong (EPA Region 9), RE: Sher-Wood Q&A, and email dated November 3, 2011 from Robert Wendoll (Dunn-Edwards Corporation) to Stanley Tong (EPA Region 9), RE: Does Dunn-Edwards make sanding sealers—240 g/l? Information from Sherwin-Williams indicates that the performance of this wood sealer may depend upon the use of its complete ''wood finishing system.'' *See* Sherwin Williams, Chemical Coatings, ''CC–F46: SHER–WOOD® KEM AQUA® Lacquer Sanding Sealer'' (stating that ''[d]ue to the wide variety of substrates, surface preparation methods, application methods, and environments, the customer should test the complete [wood finishing] system for adhesion and compatibility prior to full scale application''), available at *http://www.paintdocs.com/webmsds/webPDF.jsp?SITEID=STORECAT&prodno=035777432143&doctype=PDS&lang=E).*

materials for surface preparation or stripping unless at least one of the following conditions is met: (1) The material contains 200 grams/liter or less of VOC per liter of material, (2) the material has an initial boiling point of 190 °C (374 °F or greater), or (3) the total VOC vapor pressure of the material is 20 mm Hg or less at 20 °C (68 °F). *See* SDAPCD Rule 67.11 at section (d)(5) and Rule 67.11.1 at section (d)(3).[11] Thus, although both of these rules contain a VOC limit of 200 grams/liter for paint strippers, this limit is only one of three different compliance options and it is not clear that facilities in the San Diego area have actually achieved the 200 grams/liter VOC limit. We do not have information indicating that paint strippers can generally meet a 200 grams/liter limit by the application of reasonably available controls and Earthjustice has not provided any information to support such a conclusion.

Based on this evaluation, we conclude that SJVUAPCD Rule 4606 satisfies RACT under CAA section 182 for the 1997 8-hour ozone standard. As discussed above, however, we recommend that the SJVUAPCD consider revisiting the wood sealer limit and adding VOC limits for refinishing, replacement, and custom replica furniture operations the next time Rule 4606 is amended.

Comment 3d (Rule 4624—Transfer of Organic Liquid):

Earthjustice states that EPA's 2011 RACT SIP TSD indicates more stringent limits exist for organic liquid loading activities but fails to explain why these limits are not reasonable for Rule 4624.

Response 3d:

Our 2011 RACT SIP TSD stated that the emission limit in Rule 4624 (0.08 lbs of VOC per 1,000 gallons of liquid transferred) is consistent with the VOC limits in other districts' regulations, which range from 0.05 to 0.84 lbs of VOC per 1,000 gallons of gasoline. *See* 2011 RACT SIP TSD at 19; *see also* SJVUAPCD Rule 4624 (as amended December 20, 2007) at section 5.0; SCAQMD Rule 1142 (as adopted July 19, 1991) at section (c)(1)(B); and VCAPCD Rule 70 (as amended April 1, 2009) at section C.1. We also stated that the South Coast AQMD provides the option of either meeting a limit of 0.05 lb VOC per 1,000 gallons [12] or reducing VOC emissions by 95 percent weight from uncontrolled conditions. *See* 2011 RACT SIP TSD at 19. In response to the comment, we are clarifying that this statement was in reference to SCAQMD Rule 1142, ''Marine Tank Vessel Operations,'' which applies to all ''loading, lightering, ballasting, and housekeeping events where a marine tank vessel is filled with an organic liquid,'' or ''where a liquid is placed into a marine tank vessel's cargo tanks which had previously held organic liquid.'' *See* SCAQMD Rule 1142 (as adopted July 19, 1991), section (a). SCAQMD Rule 1142 prohibits loading, lightering, ballasting, or housekeeping events in South Coast Waters unless the owner or operator of the marine tank vessel either limits VOC emissions to 5.7 grams per cubic meter (2 lbs per 1,000 barrels, which is approximately equivalent to 0.05 lbs/1000 gallons) of liquid loaded into a marine tank vessel or reduces VOC emissions by at least 95 percent by weight from uncontrolled conditions. *Id.* at section (c). This VOC limit applies only to liquid loading or unloading operations on a marine tank vessel, which the rule defines as ''any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to carry liquid cargo in tanks.'' *Id.* at section (b). The rule does not apply to liquid loading or unloading operations at facilities onshore. The SCAQMD has a separate rule that limits VOC emissions from organic liquid loading or unloading operations at facilities onshore (Rule 462 Organic Liquid Loading), which contains the same VOC limit as SJVUAPCD Rule 4624, 0.08 lb or less per 1,000 gallons of liquid transferred. *See* SCAQMD Rule 462 (as amended May 14, 1999), section (d); *see also* Antelope Valley AQMD Rule 462 Organic Liquid Loading (as amended June 9, 1995), section (d)(1)(D) and Kern County APCD Rule 413 Organic Liquid Loading (as amended March 7, 1996), section (IV.A).

We also contacted SJVUAPCD staff to determine whether marine loading operations occur within the SJV and found that liquid transfers of ammonia, urea-ammonium nitrate, ammonia based fertilizers, molasses, and palm oil have occurred at or near the port of Stockton. Since there is no CTG for marine loading operations and we have no information indicating that emissions from the transfer of these liquids reach 10 tons per year of VOC or NO_x,[13] we believe it is reasonable to conclude that section 182 RACT does not apply to these operations. The SCAQMD marine loading rule is designed to control emissions of gasoline, aviation fuels, crude oils and other liquids containing volatile organic compounds. As explained above, SJVUAPCD's Rule 4624, which regulates VOC emissions from the transfer of organic liquids at onshore facilities, is equivalent to analogous rules in other California districts, and Earthjustice does not identify any additional control option for this source category that the District has failed to adequately evaluate.

Comment #4:

Earthjustice asserts that SJVUAPCD applies ''invalid economic tests for determining what rules are and are not reasonable'' and rejects controls ''not based solely on the cost-effectiveness of controls but based on an overly simplistic ratio of costs to profits for the industry,'' referred to as the '''10 percent of profits' test, to determine whether controls are economically feasible.'' Earthjustice asserts that this 10-percent-of-profits test ''has no connection to whether an industry is actually capable of bearing the costs of control, let alone whether the control should be considered cost-effective on a dollars per ton of emission reduction basis.'' Referencing their own comments on the Open Burning Rule and Confined Animal Facilities Rule as examples, Earthjustice asserts that the District ''discards technologically feasible control measures based on its illegal test of economic feasibility.'' Earthjustice also references EPA policy in support of its statement that EPA presumes it is reasonable for similar sources to bear similar costs of emission reductions and that capital costs, annualized costs, and cost effectiveness should be determined for all technologically feasible emission reduction options (quoting 57 FR 18070, 18074, April 28, 1992). Earthjustice further argues that EPA ''reiterates the proper test for economic feasibility * * * but then fails to explain how the District has complied with this interpretation of the statute.'' Finally, Earthjustice states that ''[u]ntil this failure has been corrected, EPA cannot reasonably conclude that the District's rules satisfy RACT because EPA cannot reasonably claim that all technologically and economically feasible controls have been adopted by the District.''

Response #4:

We agree generally that an economic feasibility analysis based on the use of the SJVUAPCD's ''10 percent of profits''

[11] EPA approved SDAPCD Rule 67.11.1 into the California SIP on June 5, 2003. *See* 68 FR 33635. Rule 67.11 is not SIP-approved.

[12] SCAQMD Rule 1142 (Marine Tank Vessel Operations) VOC limit is 2 lbs per 1,000 barrels, which is equivalent to approximately 0.05 lb per 1,000 gallons (assuming 1 barrel = 42 gallons).

[13] Ammonia and ammonium nitrate are not VOCs (40 CFR 51.100(s)), molasses is highly viscous and Palm Oil is a semi-solid at room temperature. Several Materials Safety Data Sheets for Palm Oil list its vapor pressure as: ''not applicable'', ''N/A'' and ''none listed.'' *See, e.g., http://www.sciencelab.com/msds.php?msdsId=9926383.*

test is not a sufficient basis for rejecting a control option from consideration as RACT under CAA section 182. As explained in the 2011 RACT SIP TSD, EPA's long-standing guidance on RACT [14] states that the cost of using a control measure is considered reasonable if those same costs are borne by other comparable facilities. *See* 2011 RACT SIP TSD at 11 (citing 59 FR 41998 at 42009 (August 16, 1994) and 57 FR 18070 at 18074 (April 28, 1992)). Earthjustice correctly notes that economic feasibility is largely determined by evidence that other sources in a source category have in fact applied the control technology in question and may also be based on cost effectiveness (*i.e.,* calculation of the cost per amount of emission reduction in $/ton). *Id.* We therefore do not endorse the District's use of a ''10 percent of the industry's profit'' test for evaluating the economic feasibility of an available control option for purposes of a RACT analysis.

We disagree, however, with Earthjustice's assertions that the District has ''discard[ed] technologically feasible control measures based on its illegal test of economic feasibility'' and that EPA has failed to explain how the District's analyses are consistent with EPA's interpretation of the CAA's RACT requirement.

In numerous guidance documents EPA has stated that several different factors, including cost effectiveness, may be considered in evaluating the economic feasibility of an available control option. *See, e.g.,* 57 FR at 18074 (''[t]he capital costs, annualized costs, *and* cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility'') (emphasis added); 57 FR 55620 at 55625 (November 25, 1992) (''NO_X Supplement to General Preamble'') (''comparability'' of a NO_X RACT control level ''shall be determined on the basis of several factors including, for example, cost, cost-effectiveness, and emission reductions''); 59 FR 41998 at 42013 (August 16, 1994) (''PM–10 Addendum to General Preamble'') (''capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility''). EPA has also consistently stated that States may justify rejection of certain control measures as not ''reasonably available'' based on the technical and economic circumstances of the particular sources being regulated. *See* 2011 RACT SIP TSD at 11, 12 (referencing, *inter alia,* 44 FR 53761 (September 17, 1979)).

As we explained in the 2011 RACT SIP TSD and further in the individual TSDs associated with EPA's previous actions on the District's rules, the District generally considered multiple sources of information about the costs of available control options, including information from manufacturers, vendors, stakeholders, and other air districts (*see* Rule 4308—Final Draft Staff Report, Revised Proposed Rule 4308 (Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr), October 20, 2005 Appendix C at C–3); technical reports, CTGs, US Economic Census and Internal Revenue Service data (*see* Rule 4607—Final Draft Staff Report, Revised Proposed Amendments to Rule 4607 (Graphic Arts and Paper, Film, Foil and Fabric Coatings), December 18, 2008, Appendix C at C–3, and Appendix D at D–8); and annualized costs of control options, California State oil and gas production reports, and Dun and Bradstreet profits (*see* Rule 4703—Final Staff Report Amendments to Rule 4703 (Stationary Gas Turbines), September 20, 2007, Appendix C at C–4 and Appendix D at D–8). Given EPA's long-standing position that States may justify rejection of certain control measures as not ''reasonably available'' based on the technical and economic circumstances of the particular sources being regulated, it is appropriate for the District to consider multiple sources of information about the costs of potential control options to determine if they are economically feasible with respect to sources located within the SJV.

EPA has reviewed the District's technical and economic analyses as well as supplemental information for each of the RACT rules that we have categorized under groups 1 and 2.[15] Based on these evaluations, we conclude that additional or more stringent controls are not reasonably available for implementation in the SJV area. *See* TSD at 13–32. For example, with respect to those crop categories subject to Rule 4103 (Open Burning) for which the District concluded that alternatives to burning were not economically feasible (*e.g.,* citrus orchard material), EPA considered several indicators of technical and economic feasibility, such as other State/local open burning prohibitions and information indicating current uncertainty about the feasibility of sending citrus orchard removal material to biomass facilities. *See* Final Rule, ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD),'' signed September 30, 2011, at Response #2 (pre-publication notice); *see also* Technical Support Document, SJVUAPCD Rule 4103, Open Burning, June 2011, at fn. 14. These evaluations adequately support our conclusion that additional burn prohibitions under Rule 4103 are not reasonably available for implementation in the SJV at this time. Similarly, for those ''Class Two mitigation measures'' that the SJVUAPCD did not adopt in its October 2010 revisions to Rule 4570 (Confined Animal Facilities), the District evaluated the cost effectiveness of the rejected VOC control systems (*e.g.,* venting emissions from livestock barns to biofilters, replacing naturally ventilated poultry housing with mechanically ventilated housing) by calculating the annual capital costs, annual operating costs, and emissions reductions associated with each control option. *See* Technical Support Document, SJVUAPCD Rule 4570, Confined Animal Facilities, August 2011, at 7–8 and Final Rule, signed December 13, 2011 (pre-publication notice); *see also* Final Draft Staff Report, Amended Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities), October 21, 2010, Appendices C and E. These evaluations also adequately support our conclusion that additional VOC controls under Rule 4570 are not reasonably available for implementation in the SJV at this time.

Thus, without endorsing the use of a ''10 percent of profits'' test for economic feasibility, we find that analyses supporting the District's RACT demonstration for the rules in groups 1 and 2 adequately considered other appropriate factors, such as costs of control borne by comparable sources in other nonattainment areas and cost-effectiveness (*i.e.,* the cost per amount of emission reduction in $/ton).

Comment #5:

Earthjustice argues that in preparing a RACT SIP analysis, ''the District must not only use the correct metric (*i.e.,* cost-effectiveness rather than affordability) but must also justify the cutoff applied,'' and that neither EPA nor the District purport to do this. Earthjustice also asserts that ''what is

[14] EPA has defined RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' *See* 44 FR 53762 (September 17, 1979).

[15] We note that Earthjustice's comments refer to just two specific rules as examples in which the District applied the 10 percent of profits test—Rule 4103, ''Agricultural Burning,'' and Rule 4570 ''Confined Animal Feeding Operations.'' We note further that Earthjustice did not comment on this issue on EPA's most recent proposal to approve revisions to Rule 4570. *See,* 76 FR 56706 (September 14, 2011).

considered too costly for one area may not be for another because the attainment needs of the areas are different,'' and that ''what should be considered economically feasible in the Valley may represent a more aggressive control option than what would be required elsewhere.''

Response #5:

First, we disagree with Earthjustice's assertion that neither EPA nor the District have used the correct metrics for economic feasibility. *See* Response #4 above. Second, as to Earthjustice's argument about the threshold (''cutoff'') applied to the analysis supporting the RACT SIP, it is not clear what specific ''cutoff'' the commenter intended to refer to. To the extent Earthjustice intended to argue that the District should establish and justify a consistent cost-effectiveness threshold for determining the economic feasibility of potential RACT measures, we disagree. Neither EPA nor the District has established such a generalized cost-effectiveness threshold for RACT purposes. Consistent with EPA policy, as discussed in Response #4, the District considers multiple factors in determining the economic feasibility of specific control options, such as cost effectiveness, the ratio of control costs to industry profits, control requirements in other nonattainment areas, and employment impacts. Thus, depending on the specific circumstances of the source category at issue and the control costs borne by comparable sources elsewhere, the District's selected cost-effectiveness ''cutoff'' can vary (*e.g.,* industries dominated by large highly profitable operators may be subject to more expensive control requirements than less profitable sources). As discussed above, we believe the District's economic feasibility analyses with respect to the source categories identified in group 1 and group 2 of our 2011 RACT SIP TSD were adequate.

Finally, as to the assertion that an economic feasibility analysis for sources in the SJV area may need to be more aggressive than elsewhere in light of the attainment needs, such analysis would need to be made for purposes of the RACM analysis under CAA section 172(c)(1), which is a component of the attainment demonstration. *See* Response #1 above.

III. Final Action and CAA Consequences

A. Final Action

Since our September 9, 2011 proposal, we have approved the following SJVUAPCD rules as satisfying RACT under CAA section 182.

Rule	Title	Amended	Approved
4103	Open Burning	4/15/10	Signed 9/30/11.
4311	Flares	6/18/09	11/3/11, 76 FR 68106.
4401	Steam Enhanced Crude Oil Production Wells	6/16/11	11/16/11, 76 FR 70886.
4565	Biosolids, Animal Manure, and Poultry Litter Operations	3/15/07	Signed 12/13/11.
4570	Confined Animal Facilities	10/21/10	Signed 12/13/11.
4603	Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Craft.	9/17/09	11/1/11, 76 FR 67369.
4605	Aerospace Assembly and Component Coating Operations	6/16/11	11/16/11, 76 FR 70886.
4684	Polyester Resin Operations	8/18/11	Signed 11/18/11.

For the reasons provided in our September 9, 2011 proposed rule and further explained above in response to comments, EPA is partially approving under CAA section 110(k)(3) SJVUAPCD's RACT demonstration adopted on April 16, 2009, based on our conclusion that it satisfies the requirements of CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone NAAQS except as provided below.

Simultaneously under CAA section 110(k)(3), EPA is partially disapproving the RACT SIP based on our conclusion that the SJVUAPCD has not demonstrated that the following rules satisfy RACT under CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone standard.

1. Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heaters.
2. Rule 4402—Crude Oil Production Sumps.
3. Rule 4625—Wastewater Separators.
4. Rule 4682—Polystyrene, Polyethylene, and Polypropylene Products Manufacturing.

Additionally, EPA is partially disapproving the RACT SIP with respect to the following rules, which we have not yet approved as satisfying RACT under CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone standard.

1. Rule 4566—Organic Material Composting Operations.
2. Rule 4694—Wine Fermentation and Storage Tanks.
3. Fumigant Volatile Organic Compound Regulations—California Department of Pesticide Regulation.

B. CAA Consequences of Final Partial Disapproval

EPA is committed to working with the District and CARB to resolve the identified RACT deficiencies. We note that SJVUAPCD will not be required to submit a revised CAA section 182 RACT SIP demonstration for the 1997 8-hour ozone NAAQS if each of the rule revisions required by this action is accompanied by adequate supporting analyses demonstrating that the rule satisfies current RACT requirements and EPA fully approves it into the SIP.

However, because we are finalizing a partial disapproval of the RACT SIP, the offset sanction in CAA section 179(b)(2) will apply in the SJV ozone nonattainment area 18 months after the effective date of today's final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve prior to the implementation of sanctions, SIP revisions that correct the RACT deficiencies in the individual rules identified in our proposed action. In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) addressing the deficient RACT elements in the individual rules two years after March 12, 2012, the effective date of this rule, if we have not approved a SIP revision correcting the deficiencies within two years. EPA previously found that the State had failed to submit a plan revision for SJV addressing the CAA section 182 RACT requirements for the 1-hour ozone standard, starting a FIP clock that expired on January 21, 2011. *See* 74 FR 3442 (January 21, 2009).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866,

entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and partial approvals/partial disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this partial approval/partial disapproval action does not create any new requirements I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to

perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State regulations for inclusion into the SIP under the CAA section 110 and subchapter I, part D and disapproves others, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on March 12, 2012.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(407) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(407) A plan was submitted on June 18, 2009 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP), adopted April 16, 2009.

* * * * *

[FR Doc. 2012–139 Filed 1–9–12; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 77, No. 6
Tuesday, January 10, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1314; Airspace Docket No. 11–AWP–18]

Proposed Amendment of Class E Airspace; Willcox, AZ and Revocation of Class E Airspace; Cochise, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Willcox, AZ and remove Class E airspace at Cochise, AZ. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Cochise County Airport, Willcox, AZ. This action also proposes to remove the airspace designated as Cochise, AZ and combine it with Cochise County Airport, Willcox, AZ. Decommissioning of the Cochise VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC) has made this action necessary for the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before February 24, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1314; Airspace Docket No. 11–AWP–18, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1314 and Airspace Docket No. 11–AWP–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1314 and Airspace Docket No. 11–AWP–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Class E airspace at Cochise County Airport, Willcox, AZ. Controlled airspace extending upward from 700 feet above the surface is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Cochise County Airport. This action would then remove the Cochise, AZ, airspace extending upward from 1,200 feet above the surface and combine this airspace with Cochise County Airport, Willcox, AZ. Decommissioning of the Cochise VORTAC has made this action necessary, and would enhance the safety and management of aircraft operations within the National Airspace System.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures

(3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Cochise County Airport, Willcox, AZ, and revoke controlled airspace over Cochise, AZ VORTAC.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Willcox, AZ [Modified]

Cochise County Airport, AZ
(Lat. 32°14′44″ N., long. 109°53′41″ W.)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Cochise County Airport and within 5 miles each side of the 225° bearing of the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles southwest of the Cochise County Airport, and within 5.5 miles southeast and 4.5 miles northwest of the 055° bearing of the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles northeast of the Cochise County Airport. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 32°22′30″ N., long. 110°00′02″ W.; to lat. 32°22′00″ N., long. 109°57′30″ W.; to lat. 32°30′00″ N., long. 109°54′00″ W.; to lat. 32°22′40″ N., long. 109°25′00″ W.; to lat. 32°15′30″ N., long. 109°27′30″ W.; to lat. 32°14′25″ N., long. 109°25′22″ W.; to lat. 32°10′20″ N., long. 109°25′22″ W.; to lat. 32°10′20″ N., and the Arizona/New Mexico border, thence south along the Arizona/New Mexico border to lat. 31°52′40″ N.; to lat. 31°54′00″ N., long. 109°25′27″ W.; to lat. 31°57′05″ N., long. 109°55′02″ W.; to lat. 32°07′00″ N., long. 109°54′02″ W.; to lat. 32°07′30″ N., long. 110°00′02″ W., thence to the point of beginning.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Cochise, AZ [Removed]

Issued in Seattle, Washington, on December 27, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–247 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1247; Airspace Docket No. 11–ANM–24]

Proposed Amendment of Class E Airspace; Springfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Springfield Municipal Airport, Springfield, CO. Decommissioning of the Tobe Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 24, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1247; Airspace Docket No. 11–ANM–24, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1247 and Airspace Docket No. 11–ANM–24) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1247 and Airspace Docket No. 11–ANM–24''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Springfield Municipal Airport, Springfield, CO. Airspace reconfiguration is necessary due to the decommissioning of the Tobe TACAN. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Springfield Municipal Airport, Springfield, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO, E5 Springfield, CO [Amended]

Springfield Municipal Airport, CO
(Lat. 37°27′31″ N., long. 102°37′05″ W.)
Tobe VOR/DME
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at Tobe VOR/DME, thence north along V–169 to lat. 38°34′00″ N.; to lat. 38°34′00″ N., long. 102°00′00″ W.; to lat. 36°30′00″ N., long. 102°00′00″ W.; thence west on lat. 36°30′00″ N., to V–81; thence northwest along V–81 to the point of beginning.

Issued in Seattle, Washington, on December 29, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–244 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[SATS No. MD–056–FOR; Docket ID: OSM 2010–0008]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: We are reopening and extending the public comment period on the proposed amendment to the Maryland regulatory program (the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) that was originally published on January 28, 2011, and was later reopened on March 10, 2011, to extend the comment period and announce a public meeting. The amendment involves provisions to Maryland's program to regulate coal combustion byproducts (CCBs) and, specifically, the use of CCBs in surface coal mining and reclamation operations within Maryland. The comment period is being extended to incorporate subsequent information that we received from Maryland in response to comments received during the public meeting.

This document gives the times and locations that the Maryland program, and this submittal, are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time January 25, 2012.

ADDRESSES: You may submit comments, identified by ''MD–056–FOR; Docket ID: OSM–2010–0008'', by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0008. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier:

Mr. Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Suite 300, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2827, *Email: bowens@osmre.gov.*

Ed Larrimore, Mining Program Manager, Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–1442, *Email: elarrimore@mde.state.md.us.*

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Telephone: (412) 937–2827. Email: *bowens@osmre.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2011, (76 FR 5103) we published a proposed rule to Maryland's program (Administrative Record No. 588–008). Maryland added regulations to regulate coal combustion byproducts and to establish requirements pertaining to the generation, storage, handling, processing, disposal, recycling, beneficial use, or other use of coal combustion byproducts (CCBs) within the State of Maryland. In total, these regulations pertain to all CCB activities in the State, and not just surface coal mining and reclamation operations. However, a section of the added regulations specifically pertains to surface coal mining and reclamation operations and is proposed to be part of Maryland's Federally approved state program. The regulation specific to surface coal mining and reclamation operations has been added as a new regulation, Regulation .08 under COMAR 26.20.24, Special Performance Standards.

On March 20, 2011, (76 FR 13112) we extended the public comment period (Administrative Record No. MD–588–012.1) and provided a notice of public hearing. The comment period was reopened and extended in order to afford the public more time to comment and to allow enough time to hold a public hearing as requested by a representative of the Sierra Club. On March 21, 2011, a public meeting was held and public comments were received.

In addition to the public comments that were received, we also received additional information from Maryland. On March 28, 2011, (Administrative Record No. MD–588–018) Maryland sent us a letter providing comments on the proposed amendment. In summary, Maryland requested that we consider the following specific comments in our review of their requested amendment:

1. Public notices are required for new permits and for modifications of existing permits that constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit.

2. Probable Hydrologic Consequences (PHC) determinations and Cumulative Hydrologic Impact Assessments are required for new permits and significant modifications to existing permits.

3. The TCLP leachate analysis is the procedure specifically referenced in EPA regulation 40 CFR 261.24 as the procedure to use in the determination of toxicity characteristics.

4. There are no provisions for isolating CCB material from ground water at coal mine utilization sites because the intent is to utilize the alkaline CCBs to provide alkalinity to mine backfills. The solubility of alkaline CCB materials is a desirable attribute.

5. Mine sites utilizing and disposing CCBs are required to submit monitoring data for 23 parameters annually and a shorter list of 8 parameters quarterly.

6. No additional bond has been required at CCB utilization and disposal sites because the planned use does not propose modification of the reclamation plan upon which the bond is based.

We are reopening and extending the comment period to incorporate this information that we received from Maryland.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or other relevant publications.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2012–243 Filed 1–9–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1166]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Camp Lejeune, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the Atlantic Intracoastal Waterway (AICW) adjacent to Marine Corps Base (MCB) Camp Lejeune, North Carolina, which encompasses the navigable waters of the AICW between Mile Hammock Bay and the Onslow Swing Bridge in support of military training operations on February 6th and 7th, 2012. This action is necessary to provide for the safety of life on navigable waters during this military training operation. This action is intended to restrict vessel traffic on the

Atlantic Intracoastal Waterway to protect mariners from the hazards associated with military training operations.

DATES: Comments and related material must be received by the Coast Guard on or before January 19, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1166 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1166 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Chief Warrant Officer Joseph Edge, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (252) 247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1166), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1166'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1166'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Chief Warrant Officer Joseph Edge at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

On February 6 and 7, 2012, the Marine Corps Base at Camp Lejeune, North Carolina will be conducting military training operations on the navigable waters of the Atlantic Intracoastal Waterway between position 34°32′51″ N/077°19′36″ W and 34°34′15″ N/077°16′16″ W (NAD 1983). Due to the need to protect mariners from the hazards associated with the military training operations, vessel traffic will be temporary restricted from Mile Hammock Bay and the Onslow Swing Bridge.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Atlantic Intracoastal Waterway between position 34°32′51″ N/077°19′36″ W and 34°34′15″ N/077°16′16″ W (NAD 1983). This safety zone will be established in the vicinity of Camp Lejeune, NC and enforced from 7 a.m. until 11 a.m. and from noon until 4 p.m. on February 6, 2012, and from 7 a.m. until 11 a.m. and from noon until 4 p.m. on February 7, 2012. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Intracoastal Waterway from 7 a.m. to 4 p.m. on February 6 and 7, 2012.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Warrant Officer Joseph Edge, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (252) 247–4525, email *Joseph.M.Edge@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on

the human environment. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–1166 to read as follows:

§ 165.T05–1166 Safety Zone; Atlantic Intracoastal Waterway, Vicinity of Marine Corps Base, Camp Lejeune, NC.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector North Carolina zone, as defined in 33 CFR 3.25–20, in the vicinity of the Atlantic Intracoastal Waterway between position 34°32′51″ N/077°19′36″ W and 34°34′15″ N/077°16′16″ W (NAD 1983).

(b) Definition: For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Sector North Carolina, North Carolina to act on his behalf.

(c) Regulations:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Sector North Carolina can be reached through the Sector Duty Officer at Sector North Carolina in Wilmington, North Carolina at telephone Number (910) 343–3880.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be enforced from 7 a.m. until 11 a.m., and from noon until 4 p.m. on February 6, 2012, from 7 a.m. until 11 a.m., and from noon until 4 p.m. on February 7, 2012.

Dated: December 27, 2011.

Timothy M. Cummins,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector North Carolina.

[FR Doc. 2012–237 Filed 1–6–12; 11:15 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9614–9]

RIN 2060–AQ70

Proposed Confidentiality Determinations for Data Elements Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action re-proposes confidentiality determinations for the data elements under the Mandatory Greenhouse Gas Reporting Rule. On July 7, 2010, EPA proposed confidentiality determinations for data elements and is issuing this re-proposal today due to significant changes to certain data elements. In addition, EPA is proposing confidentiality determinations for seven new data elements that are not inputs to equations. EPA is also proposing to categorize three data elements as inputs to emission equations and to defer their reporting deadline to March 31, 2013.

DATES: *Comments.* Comments must be received on or before March 12, 2012.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by January 17, 2012. Upon such request, EPA will hold the hearing on January 25, 2012 in the Washington, DC area starting at 9 a.m., local time. EPA will publish further information about the hearing in the **Federal Register** if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0028, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: GHGReportingCBI@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2011–0028, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGreporting@epa.gov.* For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm.* Alternatively, contact Carole Cook at (202) 343–9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal, memoranda to the docket, and all other related information will also be available through the WWW on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

BAMM Best Available Monitoring Methods
CAA Clean Air Act
CEMS continuous emission monitoring system
CO_2 carbon dioxide
CBI confidential business information
CEMS Continuous Emission Monitoring System
CFR Code of Federal Regulations
EIA Energy Information Administration
EOR enhanced oil recovery
EPA U.S. Environmental Protection Agency
F–GHG fluorinated greenhouse gas
GHG greenhouse gas
ICR Information Collection Request
LDC local natural gas distribution company
LNG liquefied natural gas
MMBtu million Btu
MMscfd million standard cubic feet per day
MRV monitoring, reporting, and verification
NESHAP national emission standards for hazardous air pollutants
N_2O nitrous oxide
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management & Budget
PFC perfluorocarbon
R&D research and development
RFA Regulatory Flexibility Act
SF_6 sulfur hexafluoride
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information

A. What is the purpose of this action?

This action has three purposes. First, EPA is re-proposing confidentiality determinations for the data elements in six subparts (L, DD, QQ, RR, SS, and UU) of 40 CFR part 98 of the Mandatory Greenhouse Gases Reporting rule (hereafter referred to as ''part 98''). EPA proposed confidentiality determinations for data elements contained in the proposed subparts L, DD, QQ, RR, and SS in the July 7, 2010 proposed CBI determination notice (75 FR 39094; hereinafter referred to as the ''July 7, 2010 CBI proposal''). These subparts were finalized in December of 2010 as part of two separate amendments to part 98. As explained in more detail in Section II.C of this preamble, many data elements were added or significantly changed since proposal, and portions of proposed subpart RR were split off to create a new subpart UU. Additionally, on November 29, 2011, EPA finalized amendments to subpart RR. See ''2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of The Mandatory Reporting of Greenhouse Gases Rule'' (76 FR 73886; hereinafter referred to as the ''Technical Corrections final rule''). In light of the above, we are re-proposing for public comment the confidentiality determinations for the data elements in these six subparts to reflect the data elements in the final six subparts and the new and revised data elements in subpart RR in the Technical Corrections final rule.

On May 26, 2011, EPA published the final CBI determinations for 35 part 98 subparts in ''Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act'' (76 FR 30782; hereinafter referred to as the ''Final CBI Rule''). In that rule, we created 22 data categories (11 for direct emitters of greenhouse gases (GHGs) and 11 for suppliers of GHGs and products containing GHGs) and assigned data elements in the 35 subparts to appropriate data categories. In today's action, we similarly propose to assign the data elements in the six subparts into the appropriate data categories created in the Final CBI Rule. For a list of the data categories, see Section III.A of this preamble. This notice covers all of the data elements from the six subparts except for those that are in the ''Inputs to Emission Equations'' data category. The covered data elements and their proposed category assignments are listed by data

category in the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028 Memo A.'' This memorandum reflects the proposed revisions in the Technical Corrections final rule.

As in the Final CBI Rule, this proposal does not address data elements from the six subparts in the ''Inputs to Emission Equations'' data category. Those data elements were identified in ''Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule,'' published on August 25, 2011 (76 FR 53057; hereinafter referred to as the ''Final Deferral''). In that action, EPA deferred the deadline for direct emitter reporters to report ''Inputs to Emission Equations'' data elements. EPA deferred the deadline for reporting some of these data elements to March 31, 2013, and the deadline for reporting others to March 31, 2015. For easy reference, we have placed a list of the data elements in these six subparts that are assigned to the ''Inputs to Emission Equations'' data category in the docket for today's action (''Docket EPA–HQ–OAR–2011–0028 Memo B'').

The second purpose of this action is to propose confidentiality determinations for new data elements (that are not inputs to equations) added to subparts II and TT in the Technical Corrections final rule (76 FR 73886). Subparts II and TT were originally finalized in July of 2010. Confidentiality determinations for the finalized data elements in these two subparts were included in the Final CBI Rule; however, in the Technical Corrections final rule that was issued after the Final CBI Rule, certain existing data elements were revised and certain new data elements were added. As discussed in Section I.D of this preamble, the revisions do not change the information to be reported and therefore do not affect the final confidentiality determinations for those data elements. However, the Final CBI Rule does not address the new data elements for these two subparts. Therefore, we are proposing confidentiality determinations in this action for the new subpart II and TT data elements added in the Technical Corrections final rule. The new subpart II and TT data elements and their proposed category assignments are listed by data category in Section IV of this preamble.

The third purpose of this action is to propose amendments to Table A–6 to subpart A of Part 98 to reflect amendments in the Technical Corrections final rule (76 FR 73886). In the Technical Corrections final rule, three new equation inputs are added to subparts FF and TT. In this action, EPA is proposing to defer the reporting deadline for these three equation inputs to March 31, 2013. As with other equation inputs, EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A–6 of Subpart A. EPA is therefore proposing to add these inputs to Table A–6 to require their reporting by March 31, 2013. Additionally, in the Technical Corrections final rule, certain existing equation inputs were revised, including three subpart TT equation inputs for which the section references were re-numbered. As discussed further in Section I.D of this preamble, the revisions to the equation inputs are technical or editorial in nature and do not affect the information to be collected. However, Table A–6 does not currently account for the re-numerations. Therefore, we are proposing to revise section references to the three subpart TT inputs to equations in Table A–6 as finalized in the Technical Corrections final rule.

B. Does this action apply to me?

This proposal affects entities required to submit annual GHG reports under certain subparts of Part 98. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine''). Part 98 and this action affect owners and operators of fluorinated gas production facilities, electric power systems, electrical equipment manufacturing facilities, carbon dioxide (CO_2) enhanced oil and gas recovery projects, acid gas injection projects, geologic sequestration projects, importers and exporters of pre-charged equipment and closed-cell foams, industrial wastewater treatment facilities, underground coal mines, and industrial waste landfills. Affected categories and entities include those listed in Table 1 of this preamble.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Fluorinated Gas Production	325120	Industrial gases manufacturing facilities.
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	336391	Motor vehicle air-conditioning manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	423730	Automotive air-conditioners merchant wholesalers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
CO_2 Enhanced Oil and Gas Recovery Projects	211	Oil and gas extraction projects using CO_2 enhanced recovery.
Acid Gas Injection Projects	211111 or 211112	Projects that inject acid gas containing CO_2 underground.
Geologic Sequestration Projects	N/A	CO_2 geologic sequestration projects.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Industrial Waste Landfills	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
	324110	Petroleum refineries.
	562212	Solid waste landfills.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221320	Sewage treatment facilities.

Table 1 of this preamble lists the types of entities that potentially could be affected by the reporting requirements under the nine subparts covered by this proposal. However, this list is not intended to be exhaustive, but rather provides a guide for readers regarding facilities and suppliers likely to be affected by this action. Other types of facilities and suppliers not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A as well as 40 CFR part 98 subparts L, DD, FF, II, QQ, RR, SS, TT, and UU. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What should I consider as I prepare my comments to EPA?

1. Submitting CBI

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Explain why you agree or disagree, and suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow us to reproduce your estimate.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone 202–343–9263, email *GHGReportingCBI@epa.gov*. You are also encouraged to send a separate copy of your CBI information to Carole Cook at the provided mailing address in the **FOR FURTHER INFORMATION CONTACT** section. Please do not send CBI to the electronic docket or by email.

II. Background and General Rationale

A. Background

On October 30, 2009, EPA published the Mandatory GHG Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under Part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report GHG information to EPA annually. For facilities, this includes those that directly emit GHGs (''direct emitters'') and those that geologically sequester or otherwise inject CO_2 underground. For suppliers, this includes those that supply certain products that would result in GHG emissions if released, combusted, or oxidized (''suppliers''). The data to be reported consist of GHG emission and supply information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions and supplied quantities. In the preamble to Part 98, we stated, ''Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that

are not emissions data, and are CBI'' (74 FR 56287, October 30, 2009).

On July 7, 2010, (75 FR 39094) EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling CBI to add specific procedures for the treatment of Part 98 data. The July 7, 2010 CBI proposal proposed confidentiality status determinations for the data elements for 31 subparts included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (see 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (see 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the Part 98 subparts finalized in October 2009. These changes were proposed in two separate rulemakings (see 75 FR 18455, April 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published another proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements for some of the Part 98 subparts finalized in October 2009 (75 FR 48744; hereinafter referred to as the ''August 11, 2010 revisions proposal''). EPA issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions notice (75 FR 43889, July 27, 2010; hereinafter referred to as the ''July 27, 2010 supplemental CBI proposal'').

On May 26, 2011, EPA published the Final CBI Rule for the data elements in 35 Part 98 subparts that were covered in the July 2010 proposals, except for those data elements in the ''Inputs to Emission Equations'' data category. In that final rule, EPA created 22 data categories (11 for direct emitters and 11 for suppliers) and assigned data elements in the 35 subparts to appropriate data categories. For 16 data categories (eight direct emitter data categories and eight supplier data categories), EPA issued a category-based final CBI determination for all data elements within the category. For another five data categories (two direct emitter data categories and three supplier data categories), EPA determined that they are not ''emission data'' under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. However, for the reasons explained in the preamble to that rule, EPA did not make categorical CBI determination for these five data categories but instead evaluated and determined for individual data elements in these data categories whether they qualify as CBI. As a result, each of these five categories contains both data elements determined to be CBI and those determined not to be CBI. As explained in more detail in Section II.B of this preamble, we did not take final action with respect to the data elements in the remaining one of the 22 data categories addressed in that rule: the ''Inputs to Emission Equations'' data category.

In the May 26, 2011 Final CBI Rule, EPA did not finalize confidentiality determinations for the data elements in five subparts that had been proposed or re-proposed at the time of the July 7, 2010 CBI proposal (subparts L, DD, QQ, RR, and SS). EPA finalized those five subparts and subpart UU [1] in two separate actions. On December 1, 2010, we finalized subparts L, DD, QQ, and SS (75 FR 74774), and subparts RR and UU (75 FR 75060). As explained in Section II.D of this preamble, on November 29, 2011, we published the Technical Corrections final rule that included, among other things, revisions to some subpart RR data elements (76 FR 73886).

The six affected subparts are as follows:

- Subpart L, Fluorinated Gas Production.
- Subpart DD, Electrical Transmission and Distribution Equipment Use.
- Subpart QQ, Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams.
- Subpart RR, Geologic Sequestration of Carbon Dioxide.
- Subpart SS, Electrical Equipment Manufacture or Refurbishment.
- Subpart UU, Injection of Carbon Dioxide.

As explained in more detail in Section II.C of this preamble, EPA is re-proposing confidentiality determinations for the data elements in these six subparts.

The Technical Corrections final rule also contains technical corrections, clarifying and other amendments for four additional subparts that were covered by the Final CBI Rule and the Final Deferral. As explained in more detail in Section II.D of this preamble, the revisions to the existing data elements in these subparts that are not inputs to emission equations do not change the information to be collected and therefore do not affect the confidentiality determinations made in the Final CBI Rule. However, the Technical Corrections final rule also added new data elements that are not inputs to emission equations for subparts II and TT. EPA is proposing confidentiality determinations in this action for these new data elements.

As further explained in Section II.D of this preamble, the revisions to the existing data elements in these subparts that are inputs to emission equations do not change the information to be collected and therefore generally do not affect Tables A–6 and A–7 to subpart A of Part 98, which were finalized in the Final Deferral to defer the reporting deadline for inputs to emission equations to March 31, 2013, and March 31, 2015, respectively. The one exception is that certain revisions in the Technical Corrections final rule do re-numerate some subpart TT inputs, so EPA is proposing to amend Table A–6 in this action to reflect this re-numeration. The Technical Corrections final rule also added new data elements that are inputs to emission equations for subparts FF and TT. EPA is proposing to defer the reporting deadline for these subpart FF and TT inputs to March 31, 2013. To accomplish this, EPA is proposing to amend Table A–6.

The three affected subparts are as follows:

- Subpart FF, Underground Coal Mines.
- Subpart II, Industrial Wastewater Treatment.
- Subpart TT, Industrial Waste Landfills.

B. Background on Data Elements in the ''Inputs to Emission Equations'' Data Category

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. In particular, EPA received comments that raised serious concerns regarding the public availability of data in the ''Inputs to Emission Equations'' category. In light of some of the comments on inputs to emission equations, EPA took three concurrent actions, which are as follows:

- Call for Information: Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81366 (December 27, 2010).
- Change to the Reporting Date for Certain Data Elements Required Under

[1] EPA initially proposed subparts RR and UU as a single subpart (subpart RR); however, as a result of public comments on subpart RR, EPA moved all definitions, requirements, and procedures for facilities conducting only CO_2 injection (without geologic sequestration) into a new subpart (subpart UU). Subpart RR retained all definitions, requirements, and procedures related to facilities conducting geologic sequestration.

the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule, 75 FR 81350 (December 27, 2010) (''proposed deferral'').

• Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81338 (December 27, 2010) (''interim final rule'').

As explained in the proposed deferral notice, EPA has determined that some of the comments on inputs to emission equations ''warrant in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection and review of additional information, that cannot be completed before the March 31, 2011 reporting deadline'' (75 FR 81350, 81353). We therefore issued the proposed deferral to defer the reporting deadline for data elements that are inputs to emission equations. Because EPA needed time to complete the deferral rulemaking, EPA concurrently issued the interim final rule to defer reporting of inputs to emission equations to August 31, 2011.[2] EPA also concurrently issued the call for information to collect additional information that will assist EPA with the evaluation described above. Please see the December 27, 2010 notices for these three actions for further details on these actions.

On August 25, 2011, EPA published the Final Deferral (''Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule''; 76 FR 53057). In that action, EPA deferred the deadline for direct emitter reporters to report ''Inputs to Emission Equations'' data elements. EPA deferred the deadline for reporting some of these data elements to March 31, 2013, and others to March 31, 2015. Data elements with the March 31, 2013, reporting deadline are identified in Table A–6 to subpart A and those with the March 31, 2015, reporting deadline are identified in Table A–7 to subpart A.

As explained further in Section II.D of this preamble, the tables in the Final Deferral do not reflect the changes or additions to inputs to equations in the Technical Corrections final rule. EPA is therefore proposing to amend Table A–6 to require reporting of the new inputs by March 31, 2013, and to re-numerate certain section references as finalized in the Technical Corrections final rule.

[2] The reporting deadline for year 2010 data required under the Mandatory Reporting of Greenhouse Gases Rule has since been extended to September 30, 2011. See 76 FR 14812 (March 18, 2011).

C. What is the rationale for re-proposing the CBI determinations for six subparts?

EPA included the data elements in the proposed subparts L, DD, QQ, RR, and SS in the July 7, 2010 CBI proposal because EPA did not anticipate any significant change to these data elements when finalizing these subparts. However, EPA received comments on these proposed subparts recommending significant changes to some of the data elements in these subparts. In addition, EPA received numerous comments on the July 7, 2010 CBI proposal requesting another opportunity to comment on the final set of data elements in these six subparts after their promulgation. After the subparts were promulgated, EPA evaluated the changes made between proposal and promulgation. It was clear that there were significant changes to the data elements in these subparts since proposal. There were changes in the types of data to be submitted, and new data elements were added. The changes also included definition changes and clarifications as well as technical changes that affected many of the data reporting categories and data elements. Further, we split off portions of the proposed subpart RR and created a new subpart UU. Given these significant changes, EPA agreed that an opportunity to comment on the confidentiality of data elements in these final six subparts is warranted. EPA is therefore re-proposing the confidentiality determinations for the data elements in the final six subparts.

Because this is a re-proposal, EPA is not responding to previous comments submitted on the July 7, 2010 CBI proposal relative to the data elements in these subparts. Although EPA considered those comments when developing this re-proposal, we encourage you to resubmit such comments to ensure their consideration and response by EPA in this rulemaking. In resubmitting previous comments, please make any necessary changes to clarify that you are addressing the re-proposal and add details as requested above.

D. How does the Technical Revisions final rule affect this action?

On, November 29, 2011, EPA finalized technical corrections, clarifying and other amendments to subparts W, FF, II, OO, RR, and TT of Part 98 in the Technical Corrections final rule (76 FR 73886). The final rule includes minor wording clarifications and editorial corrections to 44 data elements in subpart RR, which do not change the information to be reported to EPA. For example, several subpart RR data elements were revised to correct a rule citation, such as from paragraph (a)(5) to (a)(4). In this action, our confidentiality determination re-proposal includes the 44 data elements in subpart RR as revised in the Technical Corrections final rule. Because the revisions do not change the information to be collected under this subpart, we believe that it is appropriate to propose confidentiality determinations for these 44 data elements as finalized in the Technical Corrections final rule.

The Technical Corrections final rule similarly includes revisions to seventeen data elements in subparts FF, II, OO, and TT that are minor wording clarifications and editorial corrections. As mentioned in Section II.B of this preamble, on May 28, 2011, EPA issued final confidentiality determinations for all non-input data elements in 35 subparts in part 98, including these 17 data elements in subparts FF, II, OO, and TT. The revisions to the 17 data elements in these four subparts do not change the information to be reported to EPA under these requirements and therefore do not affect the May 26, 2011, final confidentiality determinations for these 17 data elements. We are not addressing these revisions in this action.

In addition to the technical corrections described above, the Technical Corrections final rule includes adding seven new non-input data elements to subparts II and TT. Because these new data elements were finalized after EPA's issuance of the final confidentiality determinations for data elements in subparts II and TT and therefore not covered by that action, we are proposing confidentiality determinations for these seven data elements in this action. We followed the same approach to category selection and confidentiality determinations as was finalized in the Final CBI Rule and as is followed for the six subparts in this action.

The Technical Corrections final rule also revises 21 existing inputs to equations in subparts FF, II, and TT. The revisions do not change the information to be reported to EPA under these requirements. For 18 of the 21 inputs, the revisions do not affect the August 25, 2011, final deferral. For the other three inputs, however, the revisions do re-numerate section references to three subpart TT equation inputs. These equation inputs were added in the August 25, 2011, final deferral to Table A–6 to subpart A of part 98, which lists by section the inputs to equations to be reported by March 31, 2013. We are therefore

proposing in this action to amend Table A–6 to re-numerate three subpart TT equation inputs as finalized in the Technical Corrections final rule.

Lastly, in the Technical Corrections final rule, two new equation inputs were added to subpart FF and one new equation input was added to subpart TT. In this action, EPA is proposing to defer the reporting deadline for these three equation inputs to March 31, 2013. As with other equation inputs, EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A–6 of Subpart A. EPA is therefore proposing to add these inputs to Table A–6 to require their reporting by March 31, 2013. In the Technical Corrections final rule, we added the two new subpart FF inputs to equations to the reporting requirements at 40 CFR 98.326(o). This regulatory paragraph is already included in Table A–6 to subpart A for reporting by March 31, 2013, so we are not proposing in this action to amend Table A–6 to account for the new subpart FF inputs to equations. However, the new subpart TT equation input is not yet included in Table A–6. We are therefore proposing in this action to amend Table A–6 to add it and require its reporting by March 31, 2013.

III. Re-Proposal of CBI Determinations for Six Subparts

A. Overview

We propose to apply categorical confidentiality determinations made in the Final CBI Rule to the data elements in these six subparts that are assigned to those categories. In this section, we are requesting comment on two aspects of this proposal. First, we seek comment on the proposed data category assignment for each of these data elements. Second, for those data elements assigned to the five data categories without categorical CBI determinations, we seek comment on the individual confidentiality determinations we are proposing for these data elements.

In the Final CBI Rule, EPA created 22 data categories and assigned data elements in 35 subparts to appropriate data categories. In this re-proposal, EPA similarly proposes to assign each data element in the final subparts L, DD, QQ, RR, SS, and UU to one of 21 data categories [3] based on the type and characteristics of the data element. For example, data elements that refer to the amount and composition of raw material (excluding fuel) consumed as inputs to the production process have been assigned to the ''Raw Materials Consumed That Are Not Inputs to Emission Equations'' data category. For a list of the proposed category assignments (excluding inputs to emission equations) for the data elements in these subparts, please see the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028 Memo A.'' Because the data categories created in the Final CBI Rule are sufficient in scope to cover the data elements in these six subparts, no new data categories are being proposed. For a description of each data category and the type and characteristics of data elements assigned to them, please see Sections II.C and II.D of the July 7, 2010 CBI proposal.

As mentioned earlier in this preamble and shown in Tables 2 and 3 of this preamble, in the Final CBI Rule, EPA made categorical confidentiality determinations (*i.e.,* one determination that applies to all data elements in that category) for 16 data categories (eight direct emitter data categories and eight supplier data categories). For the remaining five data categories (two direct emitter data categories and three supplier data categories), EPA determined that they are not ''emission data'' for purposes of determining GHG emission to be reported under Part 98 data elements but did not make categorical determinations regarding their CBI status. The final categorical determinations described above would apply to the data elements in the six subparts that EPA assigns to these categories through this rulemaking. We are soliciting comments on the proposed category assignments for the data elements in these six subparts. If you believe that EPA has improperly assigned certain data elements in these six subparts to the data categories, please provide specific comments identifying which data elements may be mis-assigned along with a detailed rationale for why they are not correctly assigned and in which data category they belong. In addition, if you believe that a data element should be assigned to one of the five categories that do not have a categorical confidentiality determination, please also provide specific comment along with detailed rationale and supporting information on whether such data element does or does not qualify as CBI.

As mentioned above, for five data categories (two direct emitter data categories and three supplier data categories), we determined in the Final CBI Rule that the data elements assigned to these data categories are not emission data for purposes of determining the GHG emissions to be reported under Part 98. However, for the reasons stated in the preambles to the proposed and the Final CBI Rule, we made final CBI determinations for individual data elements assigned to those categories. In making these individual CBI determinations, we considered the confidentiality determination criteria at 40 CFR 2.208, in particular whether release of the data is likely to cause substantial harm to the business's competitive position. See 40 CFR 2.208(e)(1). Consistent with that approach, we now propose to determine for individual data elements in these five data categories whether they qualify as CBI. For EPA's proposed CBI determinations for these data elements, please see Section III.B of this preamble for data elements in the two direct emitter data categories and Section III.C of this preamble for data elements in the three supplier data categories. EPA seeks comment on the proposed CBI determinations for the data elements in these five categories. When submitting a comment disagreeing with a proposed determination, please provide detailed supporting information on why the individual data element does or does not qualify as CBI.

Tables 2 and 3 of this preamble summarize the actions taken in the Final CBI Rule for 21 of the 22 data categories created in that notice (excluding the ''Inputs to Emission Equations'' data category).

[3] As previously mentioned, this proposal does not address data elements in the ''Inputs to Emission Equations'' data category. For data elements in these seven subparts that are assigned to the ''Inputs to Emission Equations'' category, please see the Memorandum entitled ''[Docket EPA–HQ–OAR–2011–0028 Memo B].''

TABLE 2—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process "Static" Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), "emission data" are not entitled to confidential treatment. The term "emission data" is defined at 40 CFR 2.301(a)(2)(i).
[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.
[c] In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

TABLE 3—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR SUPPLIER DATA CATEGORIES

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
GHGs Reported		X [c]	X [c]
Production/Throughput Quantities and Composition		X [c]	X [c]
Identification Information		X	
Unit/Process Operating Characteristics		X [c]	X [c]
Calculation, Test, and Calibration Methods		X	
Data Elements Reported for Periods of Missing Data that are Not Related to Production/Throughput or Materials Received		X	
Emission Factors			X
Amount and Composition of materials received			X
Data Elements Reported for Periods of Missing Data That are Related to Production/Throughput or Materials Received			X
Supplier Customer and Vendor Information			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), "emission data" are not entitled to confidential treatment. The term "emission data" is defined at 40 CFR 2.301(a)(2)(i).
[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.
[c] In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

B. Direct Emitter Data Categories

For direct emitter subparts L, DD, RR,[4] and SS, EPA proposes to assign each data element to one of 10 direct emitter data categories. Please see the Memorandum entitled "Docket EPA–HQ–OAR–2011–0028 Memo A" for a list of the data elements in these subparts and their proposed category assignment. In the Final CBI Rule, EPA made categorical confidentiality determinations for eight direct emitter data categories. EPA proposes to apply those final determinations to the data elements assigned to those categories in this rulemaking. For the data elements in the two direct emitter data categories that do not have categorical confidentiality determinations, we are proposing on an individual data element basis whether or not they qualify as CBI.[5]

The following two direct emitter data categories do not have category-based CBI determinations: "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations." For these two categories, EPA evaluated the individual data elements assigned to these categories to determine whether individual data elements qualify as CBI. In the sections below, EPA explains the data elements in these two categories by subpart and states the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c). EPA is specifically soliciting comments on the CBI proposals for data elements in these two data categories. In each subpart section below, the data elements that are part of the annual GHG report submission are identified in bulleted lists. Any data elements that are part of subpart-specific BAMM use extension requests are discussed but not

[4] Subpart RR is neither a direct emitter nor a supplier source category. For the purposes of this action, EPA placed each subpart RR data element into one of the two categories based on its type and characteristics.

[5] As mentioned above, EPA determined that data elements in these two categories are not "emission data" under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. That determination would apply to data elements in these six subparts assigned to those categories through this rulemaking.

individually listed because they are repetitive (for example, there are several data elements that slightly differ by only a date or equipment type), lengthy, and numerous. These data elements are listed individually by data category and proposed confidentiality determination in the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028 Memo A.'' In the subpart RR section below, EPA also identifies in a bulleted list four data elements for which we considered multiple approaches to making a CBI determination and one data element for which we considered multiple approaches to making a data category assignment. We specifically request comment on the proposed approaches for these five subpart RR data elements.

1. Subpart L—Fluorinated Gas Production

The ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' data category.

EPA is proposing to assign one subpart L data element to the ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' data category because it is a basic facility-specific characteristic that does not vary with time or with the operations of the process (and is not an input to an emission equation). The data element is:

- Location and function of the stream(s) (including process streams, emissions streams, and destroyed streams) that were analyzed under the initial scoping speciation of fluorinated GHG at 40 CFR 98.124(a), by process. *(proposed as CBI)*

EPA proposes to determine that disclosure of this data element would likely result in substantial competitive harm if released and therefore will be protected as confidential business information. EPA finds that this data element could provide insight into the manufacturing process and the configuration of the facility, such as which process equipment is sending streams to which process equipment. This could reveal information about configuration efficiencies that the reporter has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on configuration, the competitor would be able to adopt the reporter's efficiency practices with less development time and expense and would gain competitive advantage at the expense of the reporter's competitive advantage. Therefore, EPA finds that releasing the data element describing the location and function of the process streams would likely result in substantial competitive harm, and EPA proposes to determine that this data element qualifies for protection as confidential business information.

The ''Unit/process Operating Characteristics That Are Not Inputs to Emission Equations'' data category.

EPA is proposing to assign 23 subpart L data elements to the ''Unit/process Operating Characteristics That are Not Inputs to Emission Equations'' data category because they are characteristics of units, equipment, abatement devices, and other facility-specific characteristics that vary over time with changes in operations and processes (and are not inputs to emission equations). Twenty-two of these data elements are part of extension requests for the use of BAMM and relate to the reasons for a request and expected dates of compliance with reporting requirements. One is part of the annual GHG report and is listed here:

- Name of all applicable Federal or State regulations that may apply to the destruction process.

As discussed in more detail below, EPA is proposing that seven data elements in the ''Unit/process Operating Characteristics That Are Not Inputs to Emission Equations'' data category are CBI. (All seven are part of data elements included in BAMM use extension requests.) EPA is proposing to determine that the other data elements in the ''Unit/process Operating Characteristics That Are Not Inputs to Emission Equations'' data category are not CBI.

EPA proposes to determine that the annual GHG report data element in this category is not CBI. The Federal and State regulations that may apply to a fluorinated GHG destruction process or device are already part of the public record as part of the facility's Title V operating permit or minor source air emissions permit. Furthermore, Federal regulations are published in the CFR (*e.g.,* Miscellaneous Organic NESHAP is published at 40 CFR part 63, subpart FFFF) and State regulations are similarly published (*e.g.,* the Louisiana Administrative Code 33: III.501.C.6 is published in the Louisiana Register). Because this information is publicly available it does not qualify for protection as confidential business information and will be considered to be non-CBI.

EPA proposes to determine that seven of the 22 data elements included in BAMM use extension requests qualify as CBI because their disclosure would likely cause substantial harm to the reporter's competitive positions (each data element and its proposed category assignment are listed by data category in the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028, Memo A.'') Three of these data elements reveal the reason for requesting a BAMM extension and the reason why equipment was not (or could not be) installed. EPA has reviewed a number of BAMM use extension requests and determined that these three data elements contain detailed information, such as process diagrams and operational information. Process diagrams and operational information could provide insight into configuration efficiencies that the reporter has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the reporter's configuration, the competitor would be able to adopt the reporter's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the reporter's competitive advantage. Therefore, EPA finds that releasing the reasons for requesting a BAMM use extension would likely result in substantial competitive harm, and EPA proposes to determine that this information will be treated as confidential business information.

We also propose to find that four other data elements that divulge when an owner or operator will be able to attain data, equipment, or measurements to comply with reporting requirements are eligible for confidential treatment. These data elements would reveal information about the installation date of equipment and the date of anticipated startup. This could provide sensitive information regarding future process shutdowns, and likely would cause substantial competitive harm if disclosed because competitors could use this information to anticipate and potentially benefit from future decreases in product supply. For example, a competitor able to anticipate the shutdown of a reporter's facility and resulting decrease in product supply, could use this information to attract customers away from a reporter by increasing its own production or could adjust the price of its own products.

EPA proposes to determine that the remaining 15 data elements included in BAMM use extension requests do not qualify as CBI. These are narrow data elements that focus on specific reasons for the BAMM extension, such as proof of service or equipment backorder, technical infeasibilities, and conflicting safety regulations or laws. Additionally, three of these data elements are descriptions of how the facility will

prepare to meet requirements by the end of the BAMM period. These data elements do not contain detailed information, such as process diagrams and operational information. Rather, they are information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary by the reporting facilities. Therefore, EPA proposes to determine that these are not data elements the disclosure of which would likely cause substantial competitive harm and will not be protected as CBI. They will be considered non-CBI.

Finally, three of these data elements are illustrative documentation such as photographs and engineering diagrams that demonstrate how access to process streams, emissions streams, or destroyed streams could not be gained without process shutdown. Based on the type of documentation that EPA has received, EPA finds that these illustrative diagrams and photographs sent by reporters generally do not provide insight into the reporter's production processes or operational efficiencies because they only show information that is relevant to the access point in question and processes immediately upstream and downstream of that access point. Therefore, EPA proposes to determine that disclosure of these data elements is not likely to cause substantial competitive harm; therefore, they do not qualify for protection as CBI and will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

2. Subpart DD—Electrical Transmission and Distribution Equipment Use

Subpart DD covers facilities that move electricity rather than produce or process a product. EPA is proposing to assign three subpart DD data elements to the ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' data category because they are basic characteristics of equipment and facility-specific lines that do not vary with time or with the operations of the process (and are not inputs to emission equations). These three data elements are:

- Nameplate capacity of equipment containing sulfur hexafluoride (SF_6) or perfluorocarbon (PFC) existing as of the beginning of the year (excluding hermetically sealed-pressure switchgear).
- Transmission miles (length of lines carrying voltage at or above 34.5 kilovolt).
- Distribution miles (length of lines carrying voltages at or below 35 kilovolt).

EPA is proposing that all data elements in this data category are non-CBI. Nameplate capacity is the engineered volume of SF_6 or PFC contained in transmission and distribution equipment. Total nameplate capacity can vary significantly from facility to facility depending on the total number of pieces of equipment used, the age and manufacture of equipment, the location of the equipment (*e.g.,* urban vs. rural), climatic conditions, number of transmission or distribution miles within the facility, *etc.* Information about nameplate capacity does not provide insight into the performance (ability to transmit or distribute electricity) or the operational efficiency for this type of facility that would likely cause substantial competitive harm if disclosed. Therefore, the disclosure of the nameplate capacity data element is not likely to cause substantial competitive harm, and EPA is proposing it as non-CBI.

Moreover, data on transmission and distribution miles is also publicly available in the Platts UDI Directory of Electric Power Producers and Distributers,[6] which can be purchased by any interested party. Disclosure of these data by EPA does not provide any additional insight into facility-specific operating conditions or process design or to any other proprietary or sensitive information that would give insight for competitors to gain an advantage over the reporter. Because this information is publicly available, EPA proposes to determine that these data elements are not confidential; they will be considered non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

3. Subpart RR—Geologic Sequestration of Carbon Dioxide

Subpart RR is neither an exclusively direct emitter nor a supplier source category, so for the purposes of this action EPA assigned each subpart RR data element to one of the two groups based on its type and characteristics. EPA assigned subpart RR data elements that pertain to surface leakage to one of the direct emitter data categories and the remaining subpart RR data elements to one of the supplier data categories.

For the following five subpart RR data elements in the direct emitter ''Test & Calibration Methods'' data category, EPA considered multiple approaches to making a CBI determination:

- ''MRV plans (monitoring, reporting, and verification) and revised MRV plans,'' which must contain, among other components, the delineation of the maximum monitoring area and the active monitoring areas; identification of potential surface leakage pathways for CO_2 in the maximum monitoring area and the likelihood, magnitude, and timing, of surface leakage of CO_2 through these pathways; a strategy for detecting and quantifying any surface leakage of CO_2; a strategy for establishing the expected baselines for monitoring CO_2 surface leakage; and a summary of the considerations you intend to use to calculate site-specific variables for the mass balance equation.
- Annual monitoring report: Narrative history of the monitoring efforts conducted over the previous calendar year (in annual monitoring reports).
- Annual monitoring report: Description of any changes to the monitoring program that were not material changes warranting submission of a revised MRV plan (in annual monitoring reports).
- Annual monitoring report: Narrative history of any monitoring anomalies that were detected in the previous calendar year and how they were investigated and resolved (in annual monitoring reports).
- A request for discontinuation of reporting must contain either 40 CFR 98.441(b)(2)(i) or (b)(2)(ii): (ii) For all other wells, and as an alternative for wells permitted as Class VI under the Underground Injection Control program, a demonstration that current monitoring and model(s) show that the injected CO_2 stream is not expected to migrate in the future in a manner likely to result in surface leakage.

EPA is proposing to assign these five data elements to the ''Test & Calibration Methods'' data category because they are information about methods that are or were used to demonstrate that the injected CO_2 stream is not expected to migrate in the future in a manner likely to result in surface leakage. For these five data elements, EPA considered

[6] *http://www.platts.com/Products/electricpowerproducerdirectory.*

deviating from the determination that all data elements in the ''Test & Calibration Methods'' category are not entitled to CBI treatment. We evaluated whether the level of detail and information in these documents will vary so much from reporter to reporter based on site-specific conditions that a confidentiality determination cannot be made until the material is submitted and closely evaluated by EPA on a case-by-case basis. For the ''MRV plans and revised MRV plans'' data element, EPA further evaluated whether some specific elements, methods, or supportive material are entitled to CBI treatment or require case-by-case evaluation so that they should be broken out as their own data elements. Having considered these approaches, we nonetheless find that disclosure by EPA of the details in these five data elements would not provide insight to competitors about proprietary information. These data elements reveal information about monitoring techniques for which information is publicly available in the scientific community about their effectiveness, such as in conference papers and peer reviewed journal articles.[7] The ''MRV plans and revised MRV plans'' data element does not contain the monitoring results that are obtained after implementation of the MRV plan, or project information the disclosure of which is likely to cause substantial competitive harm. For the discontinuation of reporting data element, the reporter will not submit this information to EPA until after the injection has ceased and the well or group of wells have been plugged or abandoned, and thus the public availability upon EPA's release of this information is not likely to cause substantial harm to the reporter's competitive position. Therefore, we are proposing that the five data elements listed above merit the same confidentiality determination as the other data elements in the ''Test & Calibration Methods'' data category (not CBI).

We seek comment on this determination and any rationale for or against this approach. EPA notes that until this action is finalized, EPA will make case-by-case confidentiality determinations for materials submitted to EPA under subpart RR, including ''MRV plans and revised MRV plans.''

For the following subpart RR data element in the ''Calculation Methodology and Methodological Tier'' data category, EPA considered multiple approaches to making a data category assignment:

- Annual monitoring report: A description of any surface leakages of CO_2, including a discussion of all methodologies and technologies involved in detecting and quantifying the surface leakages and any assumptions and uncertainties involved in calculating the amount of CO_2 emitted.

EPA considered assigning this data element to the ''Calculation Methodology and Methodological Tier'' data category, and EPA considered assigning it to the ''Test & Calibration Methods'' category, as was done with the other annual monitoring report data elements, and either following the category-wide non-CBI determination or making a CBI determination on a case-by-case basis once the material is submitted and closely evaluated by EPA. Having considered these options, we ultimately determined that this data element provides the methodologies, technologies, and assumptions used by reporters to calculate the mass of CO_2 emitted from surface leakage. Therefore, we are proposing to assign the data element to the ''Calculation Methodology and Methodological Tier'' data category, which is limited to data elements that EPA has determined to be ''emission data'' under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98 and therefore not entitled to confidential treatment. We seek comment on this determination and any rationale for or against this approach.

4. Subpart SS—Electrical Equipment Manufacture or Refurbishment

EPA is not proposing to assign any subpart SS data elements to the ''Unit/process Static Characteristics That are Not Inputs to Emission Equations'' or the ''Unit/process Operating Characteristics That are Not Inputs to Emission Equations'' data category.

The subpart SS data elements are listed individually by data category and proposed confidentiality determination in the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028 Memo A.''

C. GHG Supplier Data Categories

For supplier subparts QQ, RR, and UU,[8] EPA is assigning each data element to one of eleven supplier data categories. For the data elements in three data categories, we are proposing whether or not each separate data element is entitled to confidential treatment.

As mentioned above in Section III.B of this preamble, for the eight data categories with category-based final determinations, EPA will apply these determinations to all the data elements assigned to those categories from the six subparts. EPA's rationale for the final CBI determination can be found in the preamble to the Final CBI Rule (76 FR 30782). For a list of the proposed category assignments (excluding inputs to emission equations) for the data elements in these subparts, please see the Memorandum entitled ''Docket EPA–HQ–OAR–2011–0028 Memo A.''

With respect to the three supplier data categories that have been determined not to be emission data but do not have category based confidentiality determinations (''GHGs Reported,'' ''Production/Throughput Quantities and Composition,'' and ''Unit/Process Operating Characteristics''), EPA evaluated the individual data elements in the six subparts assigned to these categories to determine whether they qualify as CBI. In the sections below, EPA lists the data elements in the three categories by subpart and states the reasons for proposing to determine that these data elements do or do not qualify for protection as CBI under Freedom of Information Act (FOIA) exemption 4, CAA section 114(c), and EPA regulations at 40 CFR 2.208 and 2.301. EPA is emphasizing that we request comment on these proposals.

1. Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams

EPA is proposing to assign 10 data elements to the ''GHGs Reported'' data category because they are the actual GHGs reported as imported or exported. Five of the data elements are for importers and five are for exporters. The importer and exporter data elements are identical except for whether they are specific to importers or exporters, so we have combined the analogous data elements in the five bullets in the list below to reduce repetition. Note that all 10 data elements represented in this specific case are also in the ''Production/Throughput Quantities and Composition'' data category because the GHG reported is also the product being imported or exported.[9]

[7] For example, see papers from the International Conference on Greenhouse Gas Control Technologies.

[8] Subparts RR and UU are neither exclusively direct emitter nor supplier source categories. For the purposes of this action, EPA placed each subpart RR data element into one of the two categories based on its type and characteristics. EPA placed all subpart UU data elements into the supplier source category based on their type and characteristics.

[9] Where a data element is included in more than one data category, we are proposing the same CBI

• Total mass of each fluorinated greenhouse gas (F–GHG) imported/exported in pre-charged equipment or closed-cell foams.
• Identity of imported/exported F–GHG used as a refrigerant or electrical insulator.
• Identity of the imported/exported F–GHG contained in the closed-cell foam in each appliance.
• Identity of the imported/exported F–GHG in the foam.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: Total mass in metric tons of CO_2e of the fluorinated GHGs imported/exported in closed-cell foams.

EPA is proposing to assign 30 data elements to the ''Production/Throughput Quantities and Composition'' data category because they refer to the composition and quantities of the products imported and exported. Ten of the data elements are in the ''GHGs Reported'' data category list above because the product imported or exported is also the GHG reported; they are not repeated in the list below. For the other 20 data elements in this data category, the 10 importer data elements and 10 exporter data elements are identical except for whether they are specific to importers or exporters. Therefore, we have combined the analogous data elements in the 10 bullets in the list below to reduce repetition.

• Charge size (holding charge, if applicable) for each type of pre-charged equipment imported/exported.
• Number of pre-charged equipment imported/exported.
• Mass of the imported/exported F–GHG contained in the foam in each appliance.
• Number of appliances imported/exported.
• Density of the imported/exported F–GHG in the foam.
• Volume of foam imported/exported.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are imported/exported inside of appliances, the mass of the fluorinated GHGs in CO_2e contained in the foam in each appliance.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are imported/exported inside of appliances, the number of appliances imported/exported for each type of appliance.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are not imported/exported inside of appliances, the mass in CO_2e of the fluorinated GHGs in the foam.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are not imported/exported inside of appliances, the volume of foam imported/exported for each type of closed-cell foam.

For subpart QQ, EPA is proposing that all data elements in the ''GHGs Reported'' and ''Production/Throughput Quantities and Composition'' data categories be considered CBI. These data categories contain importer- and exporter-level production information (mass, volume, density, quantity, or identity of the equipment or foam or fluorinated gas within the equipment or foam), reported separately for pre-charged equipment, closed-cell foam, and for appliances that contain closed-cell foam. EPA proposes to determine that these importer- and exporter-level product-specific GHG data are to be considered CBI because the disclosure of these data elements would likely cause substantial harm to the competitive positions of businesses reporting these data. Releasing these data could be detrimental to the operational and marketing strategies of the reporting parties, as explained in the following example.

The disclosure of the volume of foam or the count of appliances or equipment exported provides insight into a firm's market share and financial performance. For example, product import or export data could reveal whether a U.S. firm is experiencing rapid growth or decline in market share. Competitors could use such data to gain a competitive advantage over another firm by better approximating a firm's market share. Competitors may be able to drive struggling reporters out of business by implementing short-term price-cutting tactics. In many cases, an accurate estimate of the market share of a firm is difficult to procure, and the disclosure of such information through the GHG Reporting Rule could harm the competitive position of reporting parties. As previously noted, EPA is proposing that all data elements in these two data categories (''GHGs Reported'' and ''Production/Throughput Quantities and Composition'') are to be considered CBI. EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

EPA is proposing to assign eight data elements to the ''Unit/Process Operating Characteristics'' data category because they refer to the operating characteristics of the supplier, such as dates of shipment. Four data elements are for importers and four are for exporters. The importer and exporter data elements are identical except for whether they relate to imports or exports, so only four bullets appear in the list below to reduce repetition.

• Dates on which pre-charged equipment were imported/exported.
• Dates on which closed-cell foams were imported/exported.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: Dates on which the closed-cell foams were imported/exported.
• If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: Certification that the importer/exporter was unable to obtain information on the identity and mass of the fluorinated GHGs within the closed-cell foam from the closed-cell foam manufacturer or manufacturers.

EPA is proposing that all data elements in this data category are non-CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Releasing a certification about the ability to obtain information would not likely cause substantial competitive harm because certification statements are general in nature, do not provide any insight into the design or operation efficiencies of the plant, and do not reveal other competitive information (*e.g.,* market share, ability to increase production to meet new increases in demand, or price structures). Moreover, certification statements will consist of only the language that EPA publicly provides in the data reporting tool and will not include any facility- or process-specific information that could be considered proprietary. Therefore, EPA proposes that certification statements are not CBI.

The other subpart QQ data elements in this data category are dates of import or export. Dates do not reveal information related to the type or quantity of product imported or exported, or to the operational strengths or weaknesses, operational capacity, or customer base of the reporter. Dates of import or export would not likely cause substantial competitive harm if released

determination for that data element in both categories.

because dates do not provide any insight into at what percent of capacity a firm is operating or into financial performance, the release of which might allow competitors to implement short-term price cutting tactics to capture the reporter's market share. Therefore, EPA proposes that these data elements, the date of the import or export, are not eligible for confidential treatment and will be considered non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

2. Subpart RR—Geologic Sequestration of Carbon Dioxide

Subpart RR is neither a direct emitter nor a supplier source category, so for the purposes of this action EPA assigned each subpart RR data element to one of the two groups based on its type and characteristics. EPA assigned subpart RR data elements that pertain to surface leakage to one of the direct emitter data categories and the remaining subpart RR data elements to one of the supplier data categories.

EPA is proposing to assign nine data elements to the ''GHGs Reported'' data category because they are the actual GHGs reported. Note that all nine of the data elements in this specific case are also in the ''Production/Throughput Quantities and Composition'' data category because the GHG reported is also the product being used as a throughput.[10]

- If you receive CO_2 by pipeline, report the following for each receiving flow meter: Total net mass of CO_2 received (metric tons) annually.
- If you receive CO_2 in containers, report: The net mass of CO_2 received (in metric tons) annually.
- If you use more than one receiving flow meter, report the total net mass of CO_2 received (metric tons) through all flow meters annually.
- For each injection flow meter (mass or volumetric), report: The mass of CO_2 injected annually.
- Total CO_2 injected during the reporting year as calculated in Equation RR–6.
- For each separator flow meter (mass or volumetric), report: CO_2 mass produced (metric tons) annually.
- Annual CO_2 produced in the reporting year, as calculated in Equation RR–9.
- Annual CO_2 sequestered in the subsurface geologic formations in the reporting year, as calculated by Equation RR–11 or RR–12.
- Cumulative mass of CO_2 reported as sequestered in the subsurface geologic formations in all years since the well or group of wells became subject to reporting requirements under subpart RR.

EPA is proposing to assign 26 data elements to the ''Production/Throughput Quantities and Composition'' data category because they refer to the quantities and composition of CO_2 produced and used as throughput at the site. Note that nine of the data elements in this specific case are in the ''GHGs Reported'' data category list above because the GHG reported is also the product being used as a throughput. They are not repeated in the list below. Furthermore, five data elements about mass flow meters and five data elements about volumetric flow meters are identical except for whether they are specific to mass or volumetric meters. Therefore, we have combined the 10 analogous data elements into five bullets in the list below to reduce repetition. The remaining seven data elements that EPA proposes to assign to this data category each appear in the list below under an individual bullet.

- For submissions in support of an R&D project exemption from reporting under subpart RR: Planned annual CO_2 injection volumes during this time period.
- If a volumetric/mass flow meter is used to receive CO_2, report the following unless you reported yes to 40 CFR 98.446(a)(4): Volumetric/mass flow through a receiving flow meter at standard conditions in each quarter.
- If a volumetric/mass flow meter is used to receive CO_2, report the following unless you reported yes to 40 CFR 98.446(a)(4) of this section: The volumetric/mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well in each quarter.
- If a volumetric/mass flow meter is used to receive CO_2, report the following unless you reported yes to 40 CFR 98.446(a)(4) of this section: CO_2 concentration in the flow in each quarter.
- If you receive CO_2 in containers, report: The mass (in metric tons) or volume at standard conditions (in standard cubic meters) of contents in containers in each quarter.
- If you receive CO_2 in containers, report: The concentration of CO_2 of contents in containers (volume or weight percent CO_2 expressed as a decimal fraction) in each quarter.
- If you receive CO_2 in containers, report: The mass (in metric tons) or volume (in standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.
- For each injection flow meter (mass or volumetric), report: CO_2 concentration in flow (volume or weight percent CO_2 expressed as a decimal fraction) in each quarter.
- For each injection flow meter, report: If a volumetric/mass flow meter is used, the volumetric/mass flow rate at standard conditions in each quarter.
- For each separator flow meter (mass or volumetric), report: CO_2 concentration in flow (volume or weight percent CO_2 expressed as a decimal fraction) in each quarter.
- If a volumetric/mass separator flow meter is used, volumetric/mass flow rate at standard conditions in each quarter.
- The entrained CO_2 in produced oil or other fluid divided by the CO_2 separated through all separators in the reporting year (weight percent CO_2 expressed as a decimal fraction) used as the value for X in Equation RR–9 and as determined according to your EPA-approved MRV plan.

EPA proposes that all data elements in these two data categories (''GHGs Reported'' and ''Production/Throughput Quantities'') are not CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Six of the data elements are facility-level and flow meter-level information on the quantity of CO_2 injected. The six data elements are available from Underground Injection Control (UIC) permits, which are issued for each injection well by EPA or by States that have assumed primary enforcement authority for permitting injection wells. Information related to the permits is reported to EPA or States at least annually and made available to the public either through State Web sites or upon request from the public. Because this information is routinely publicly available, EPA finds that further disclosure of data elements on CO_2 injection is not likely to cause substantial competitive harm to the reporter, and EPA proposes to determine that this information will not be treated as confidential; rather it will be considered non-CBI.

Six of the data elements are facility-level and flow meter-level information

[10] Where a data element is included in more than one data category, we are proposing the same CBI determination for that data element in both categories.

on the quantity of CO_2 produced. The reporters that are required to include this information in their annual reports inject CO_2 underground into oil or natural gas reservoirs through injection wells for the purpose of increasing crude oil production or enhancing recovery of natural gas, and the CO_2 is then produced with oil and gas. State oil and gas conservation agencies in all States where enhanced oil and gas recovery is occurring collect information on quantities of oil and gas produced by well to calculate royalties. This information is reported to EPA or States at least annually and made available to the public either through State Web sites or upon request from the public. Moreover, incremental oil production from CO_2 injection is published in the biannual Oil & Gas Journal Enhanced Oil Recovery survey.[11] Given the present level of reporting of production in the EOR industry just described (*i.e.,* information is made publicly available by States and in the biannual industry reports), EPA finds that CO_2 production information does not provide additional insight into any aspect of operations the release of which might undercut any competitive advantage that the reporter may enjoy. Because this information is publicly available, EPA proposes to determine that this information will not be treated as confidential; rather, it will be considered to be non-CBI.

Subpart RR facilities must report annual mass of CO_2 sequestered in the subsurface geologic formations in the reporting year, as calculated by Equation RR–11 or RR–12. These values are calculated from CO_2 injection, production, and emission data using a mass balance approach. As discussed above in this section, CO_2 injection and CO_2 production data are already publicly available. In addition, CO_2 emission data are emission data and must be made publicly available. As a result, the quantity of CO_2 sequestered can be calculated from data that are already publicly available. Because this information may be readily derived from information already publicly available, EPA has determined that its release of the reported mass of CO_2 sequestered would not likely cause substantial competitive harm. For these reasons, EPA proposes to determine that this information is not eligible for confidential treatment and will be considered to be non-CBI.

Twelve of the data elements are facility-level and flow meter-level information on the quantity of CO_2 received. None of the data elements on CO_2 received includes information on CO_2 prices or contract terms, such as information on the concentration of other incidental substances in the CO_2 stream, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. The data elements also do not include information that would allow a competitor to deduce the reporter's operating costs.

Moreover, as an example, for a facility where the CO_2 received is wholly injected and is not mixed with any other supply of CO_2, such as a geologic sequestration project at a deep saline formation, the reporter may report the quantity of CO_2 injected as the quantity of CO_2 received. This amount can be determined from information that is reported at least annually as part of a facility's UIC permit and made available to the public either through State Web sites or upon request from the public. For the reasons described in this paragraph, EPA finds that releasing the 12 data elements on CO_2 received would not likely result in substantial competitive harm, and EPA proposes to determine that this information does not qualify for confidential treatment and will be considered to be non-CBI.

EPA is proposing to assign nine data elements to the ''Unit/Process Operating Characteristics'' data category because they refer to the operating characteristics of the site, such as project duration and CO_2 source.

- For submissions in support of a research and development (R&D) project exemption from reporting under subpart RR: The planned duration of CO_2 injection for the project.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The research purposes of the project.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The source and type of funding for the project.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The class of the underground injection control permit.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The duration of the underground injection control permit.
- For submissions in support of an R&D project exemption from reporting under subpart RR: For an offshore facility not subject to Safe Drinking Water Act, a description of the legal instrument authorizing geologic sequestration.
- Source of the CO_2 received according to the following categories: CO_2 production wells, electric generating unit, ethanol plant, pulp and paper mill, natural gas processing, gasification operations, other anthropogenic source, CO_2 received from a discontinued enhanced oil and gas recovery project, and unknown.
- For each injection flow meter, report the location of the flow meter.
- If a well is permitted by an Underground Injection Control program, report: Underground Injection Control permit class.

EPA is proposing that all data elements in this data category are non-CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Five of these data elements include basic information on the legal instrument authorizing geologic sequestration. For a facility permitted by the UIC program under authority of the Safe Drinking Water Act, information on the class and duration of the permit is routinely publicly available in the UIC permit. For an offshore facility that is not subject to the Safe Drinking Water Act and therefore does not need a UIC permit, the facility would be subject to other statutory authority authorizing the facility to conduct geologic sequestration. Since these five data elements contain public information, EPA finds that their release by EPA is not likely to cause substantial competitive harm; they do not qualify for confidential treatment and will be considered to be non-CBI.

Three of these data elements are information on an R&D project's planned duration, purpose, source of funding, and type of funding. These data elements do not include the amount of funding received. They do not provide insight into the costs of sequestering CO_2 at the facility, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. For many existing R&D projects, information in these three data elements is already publicly available. For example, the Department of Energy National Energy Technology Laboratory publishes information on its Web site about the Regional Carbon Sequestration Partnership projects that it funds.[12] These projects also participate in public conferences at which they present papers about their projects and findings. Since this information is of the same

[11] Worldwide Enhanced Oil Recovery Survey. 2010. Oil and Gas Journal, Volume 108, Issue 14.

[12] *http://www.netl.doe.gov/technologies/carbon_seq/partnerships/RCSP_ProjectDescriptions.html.*

nature for all projects, EPA finds that publication of such information by some projects demonstrates that disclosure of equivalent information for all projects is not likely to cause substantial harm. Therefore, EPA proposes to determine that this information is not eligible for confidential treatment; it will be considered to be non-CBI.

The data element related to the source of CO_2 received identifies the type of source that supplied the facility with CO_2 in the reporting year, such as an ethanol plant. This data element does not include information that would identify a specific facility or company that supplies the CO_2 to the reporter, or the amount of CO_2 provided by each supplier. This data element does not include information on CO_2 prices or contract terms, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. Since revealing this data element does not provide competitors with an advantage, EPA proposes to determine that it is not eligible for confidential treatment and will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

3. Subpart UU—Injection of Carbon Dioxide

EPA first proposed in a single subpart RR the reporting requirements that are now divided between final subparts RR and UU. EPA moved all definitions, requirements, and procedures for facilities conducting only CO_2 injection into a new subpart (subpart UU). Subpart RR retains all definitions, requirements, and procedures related to facilities conducting geologic sequestration. The explanation and a summary of major changes since proposal appear in the final subparts RR and UU promulgation notice (75 FR 75060, December 1, 2010). Subpart UU is neither a direct emitter nor a supplier source category, so for the purposes of this action EPA assigned the subpart UU data elements to one of the supplier data categories because they are most similar in type and characteristics to supplier data.

EPA is proposing to assign three data elements to the ''GHGs Reported'' data category because they are the actual GHGs reported. Note that all three of the data elements in this specific case are also in the ''Production/Throughput Quantities and Composition'' data category because the GHG reported is also the GHG being used as a throughput.[13]

- If you receive CO_2 by pipeline, report the following for each receiving flow meter: Total net mass of CO_2 received (metric tons) annually.
- If you receive CO_2 in containers, report: The net total mass of CO_2 received (in metric tons) annually.
- If you use more than one receiving flow meter, report the net total mass of CO_2 received (metric tons) through all flow meters annually.

EPA is proposing to assign 12 data elements to the ''Production/Throughput Quantities and Composition'' data category because they refer to the quantities and composition of CO_2 used as throughput at the site. Note that three of the data elements in this specific case are in the ''GHGs Reported'' data category list above because the GHG reported is also the GHG being used as a throughput. They are not repeated in the list below. Furthermore, three data elements about mass flow meters and three data elements about volumetric flow meters are identical except for whether they are specific to mass or volumetric meters. Therefore, we have combined the six analogous data elements into three bullets in the list below to reduce repetition. The remaining three data elements that EPA proposes to assign to this data category also appear in the list below.

- If you receive CO_2 by pipeline, report the following for each receiving flow meter: If a volumetric/mass flow meter is used to receive CO_2: Volumetric/mass flow through a receiving flow meter at standard conditions in each quarter.
- If you receive CO_2 by pipeline, report the following for each flow meter: If a volumetric/mass flow meter is used to receive CO_2: The volumetric/mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well in each quarter.
- If you receive CO_2 by pipeline, report the following for each receiving flow meter: If a volumetric/mass flow meter is used to receive CO_2: CO_2 concentration in the flow in each quarter.
- If you receive CO_2 in containers, report: The mass (in metric tons) or volume at standard conditions (in standard cubic meters) of contents in containers in each quarter.
- If you receive CO_2 in containers, report: The concentration of CO_2 of contents in containers (volume or weight percent CO_2 expressed as a decimal fraction) in each quarter.
- If you receive CO_2 in containers, report: The mass (in metric tons) or volume (in standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.

EPA proposes that all data elements in these two data categories (''GHGs Reported'' and ''Production/Throughput Quantities'') are not CBI. These data elements are facility-level and flow meter-level data for CO_2 received.

None of the data elements on CO_2 received includes information on CO_2 prices or contract terms, such as information on the concentration of other incidental substances in the CO_2 stream, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. The data elements also do not include information that would allow a competitor to deduce the reporter's operating costs. Moreover, for a facility where the CO_2 received is wholly injected and is not mixed with any other supply of CO_2, such as a geologic sequestration project at a deep saline formation, the reporter may report the quantity of CO_2 injected as the quantity of CO_2 received. This amount can be determined from information that is reported at least annually as part of a facility's UIC permit and made available to the public either through State Web sites or upon request from the public.

For these reasons, EPA finds that releasing the 12 data elements on CO_2 received would not likely result in substantial competitive harm, and EPA proposes to determine that this information does not qualify for confidential treatment and will be considered to be non-CBI.

EPA is proposing to assign one data element to the ''Unit/Process Operating Characteristics'' data category because it refers to an operating characteristic of the site.

- Source of the CO_2 received according to the following categories: CO_2 production wells, electric generating unit, ethanol plant, pulp and paper mill, natural gas processing, gasification operations, other anthropogenic source, discontinued

[13] Where a data element is included in more than one data category, we are proposing the same CBI determination for that data element in both categories.

enhanced oil and gas recovery project, and unknown.

The data element related to the source of CO_2 received identifies the type of source that supplied the facility with CO_2 in the reporting year, such as an ethanol plant. This data element does not include information that would identify a specific facility or company that supplies the CO_2 to the reporter, or the amount of CO_2 provided by each supplier. This data element does not include information on CO_2 prices or contract terms, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. EPA finds that the release by EPA of the data element related to the source of CO_2 received is not likely to cause substantial competitive harm, and EPA proposes to determine that it does not qualify for confidential treatment; it will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

D. Commenting on the Proposed Confidentiality Determinations and Data Category Assignments

By making confidentiality determinations prior to data reporting through this proposal and rulemaking process, potential reporters are able to submit comments identifying data they consider sensitive and provide the rationales and supporting documentation they would otherwise submit for case-by-case confidentiality determinations. We seek comment on the confidentiality status of data elements in two direct emitter data categories (''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations'') and three supplier data categories (''GHGs Reported,'' ''Production/Throughput Quantities and Composition,'' and ''Unit/Process Operating Characteristics''). We will evaluate claims of confidentiality before finalizing the proposed confidentiality determinations; however, this will be your only opportunity to substantiate your confidentiality claim. Where we make confidentiality determinations prior to data reporting through this proposal and rulemaking process, you will not be able to claim separately that certain data that has already been categorized as data to be released are CBI when you submit those data as part of a GHG emissions report under Part 98.

Please consider the following instructions in submitting comments on the data elements in these six subparts.

Please identify each individual data element you do or do not consider to be CBI or emission data in your comments. Please explain specifically how the public release of that particular data element would or would not cause a competitive disadvantage to a facility. Discuss how this data element may be different from or similar to data that are already publicly available. Please submit information identifying any publicly available sources of information containing the specific data elements in question, since data that are already available through other sources would not be CBI. In your comments, please identify the manner and location in which each specific data element you identify is available, including a citation. If the data are physically published, such as in a book, industry trade publication, or federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and the date you last visited the Web site and identify the Web site publisher and content author.

If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of these data, and explain how the combination of data could be used to cause competitive harm. Describe the measures currently taken to keep the data confidential. Avoid conclusory and unsubstantiated statements, or general assertions regarding potential harm. Please be as specific as possible in your comments and include all information necessary for EPA to evaluate your comments.

IV. Proposal of CBI Determinations for New Data Elements in Subparts II and TT

The Technical Corrections final rule includes amendments to 48 data elements in subparts FF, II, OO, and TT, including revising 17 data elements that are not inputs to equations and adding seven data elements that are not inputs to equations. As explained in Section II.D of this preamble, the revisions to the 17 non-input data elements do not change the information to be collected and therefore do not affect the final confidentiality determinations for these data elements in the Final CBI rule. This section sets forth EPA's proposed confidentiality determinations for the seven new non-input data elements. These new data elements were added to subparts II and TT.

We are proposing to categorize two of the seven new data elements in the ''Calculation Methodology & Methodological Tier'' data category. Because there was a categorical determination in the Final CBI Rule that this data category is emissions data, we are proposing these two data elements as emissions data.

- Statement that biogas pressure is incorporated into monitoring equipment internal calculations. (Subpart II: Calculation Methodology & Methodological Tier).
- The calendar year for which the data elements in 40 CFR 98.466(b) apply. (Subpart TT: Calculation Methodology & Methodological Tier).

We are proposing to categorize one of the seven new data elements in the ''Test & Calibration Methods'' data category. Because there was a categorical determination in the Final CBI Rule that this data category is not CBI, we are proposing that this data element is not CBI.

- If DOCx was determined by a 60-day anaerobic biodegradation test, specify the test method used. (Subpart TT: Test & Calibration Methods).

EPA is proposing to categorize four of the seven new data elements in the two direct emitter data categories with no categorical confidentiality determination (''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations'' data categories). For these two data categories, EPA evaluated the individual data elements assigned to these categories to determine whether individual data elements qualify as CBI. In this section, EPA explains the data elements in these two categories and states the reasons for proposing to

determine that each does or does not qualify as CBI under CAA section 114(c).

EPA proposes to determine that the four new data elements, which are all in subpart TT and listed below, are not CBI.

- If a methane correction factor (MCF) value other than the default of 1 is used, provide a description of the aeration system, including aeration blower capacity.
- If an MCF value other than the default of 1 is used, the fraction of the landfill containing waste affected by the aeration.
- If an MCF value other than the default of 1 is used, provide the total number of hours during the year the aeration blower was operated.
- If an MCF value other than the default of 1 is used, provide other factors used as a basis for the selected MCF value.

These data elements describe the aeration system, the number of hours the aeration system was used, the capacity of the aeration blower, the fraction of landfill affected by aeration, and the factors used as the basis of the methane correction factor. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other sensitive information. Therefore, EPA proposes that they will not be protected as confidential business information and will be considered to be non-CBI.

We are soliciting comments on the proposed categorical assignments for the seven new data elements in these subparts. If you believe that EPA has improperly assigned certain data elements in these subparts to the data categories, please provide specific comments identifying which data elements may be assigned incorrectly along with a detailed rationale for why they may be assigned incorrectly and in which data category they belong.

V. Deferral of Inputs to Emission Equations for Subparts FF and TT and Amendment to Table A–6

Of the 48 subpart FF, II, OO, and TT data elements that are addressed in the Technical Corrections final rule, 24 are inputs to emission equations. Of these, 21 are revisions to existing inputs to emission equations that are addressed in the Final Deferral and included in Tables A–6 and A–7 to subpart A of Part 98. As explained in Section II.D of this preamble, for 18 of the 21 inputs, the revisions do not affect the Final Deferral. For the remaining three inputs, however, which are in subpart TT, the revisions do re-numerate section references. These three equation inputs were added in the Final Deferral to Table-6 to subpart A. We are therefore proposing in this action to amend Table A–6 to re-numerate three subpart TT equation inputs as finalized in the Technical Corrections final rule.

Of the 24 inputs to emission equations addressed in the Technical Corrections final rule, three are new data elements that we are proposing for the first time to add to the ''Inputs to Emission Equations'' data category. In this action, we are proposing to defer the reporting deadline for the following three data elements to March 31, 2013.

- Moisture content used in Equation FF–1 and FF–3. (Subpart FF: Inputs to Emission Equations).
- The gaseous organic concentration correction factor used, if Equation FF–9 was required. (Subpart FF: Inputs to Emission Equations).
- The methane correction factor (MCF) value used in the calculations. (Subpart TT: Inputs to Emission Equations).

As explained in Section II.A of the Final Deferral, EPA is deferring the reporting deadline until March 31, 2013, rather than March 31, 2015, for certain data elements categorized as inputs to emission equations because our evaluations on the sensitivity of these data elements are less time-consuming or sufficiently far along in the inputs evaluation process, outlined in the memorandum to the Final Deferral docket, ''Process for Evaluating and Potentially Amending Part 98 Inputs to Emission Equations,'' to allow for data reporting in 2013. As with other equation inputs, EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A–6 of Subpart A. EPA is therefore proposing to add these inputs to Table A–6 to require their reporting by March 31, 2013.

In the Technical Corrections final rule, we added the two new subpart FF inputs to equations to the reporting requirements at 40 CFR 98.326(o). This regulatory paragraph is already included in Table A–6 for reporting by March 31, 2013, so we are not proposing in this action to amend Table A–6 to account for the new subpart FF inputs to equations. However, the new subpart TT equation input is not yet included in Table A–6. We are therefore proposing in this action to amend Table A–6 to add it and require its reporting by March 31, 2013.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues.

Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action is administrative and does not increase the reporting burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these six subparts, under 40 CFR part 98, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by EPA have been assigned the following OMB control numbers: 2060–0650, for subparts L, DD, and SS; 2060–0649, for subparts RR and UU; and 2060–0647 for subparts FF, II, and TT. The OMB control numbers for EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this re-proposal on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any new requirement on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install continuous emission monitoring systems (CEMS) if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an ''open door'' policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of this action on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This re-proposal is administrative and does not increase the reporting burden. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a more detailed discussion about how Part 98 relates to existing State programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This action applies to facilities that directly emit greenhouses gases. It does not apply to governmental entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels, so relatively few government facilities would be affected. This action also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials. For a summary of EPA's consultation with State and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This re-proposal is administrative and does not increase the reporting burden. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses only reporting and recordkeeping procedures.

GHG Reporting Rule—Proposed Confidentiality Determinations for 10 Subparts

List of Subjects 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: December 22, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Table A–6 to subpart A of part 98 is amended by revising the entries for subpart TT to read as follows:

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
*	*	* * * * *
TT	98.466(a)(2)	All.
TT	98.466(a)(3)	Only last year the landfill accepted waste (for closed landfills using Equation TT–4).
TT	98.466(a)(4)	Only capacity of the landfill in metric tons (for closed landfills using Equation TT–4).
TT	98.466(b)(3)	Only fraction of CH_4 in landfill gas.
TT	98.466(b)(4)	Only the methane correction factor (MCF) value used in the calculations.
TT	98.466(c)(1)	All.
TT	98.466(c)(4)(i)	All.
TT	98.466(c)(4)(ii)	All.
TT	98.466(c)(4)(iii)	All.
TT	98.466(d)(2)	All.
TT	98.466(d)(3)	Only degradable organic carbon (DOCx) value used in calculations.
TT	98.466(e)(2)	Only surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type (for facilities using a landfill gas collection system).
TT	98.466(f)	All.

[FR Doc. 2011–33591 Filed 1–9–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 77, No. 6
Tuesday, January 10, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0116]

Notice of Request for Extension of Approval of an Information Collection; Importation of Shelled Peas From Kenya

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of shelled peas from Kenya.

DATES: We will consider all comments that we receive on or before March 12, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0116-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0116, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0116* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of shelled peas from Kenya, contact Mr. Alex Belano, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Shelled Peas From Kenya.

OMB Number: 0579–0302.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54).

Under these regulations, shelled peas from Kenya are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require that shipments of peas be accompanied by a phytosanitary certificate issued by the national plant protection organization of Kenya with an additional declaration stating that the peas have been shelled and washed in accordance with § 319.56–45 and have been inspected and found free of certain plant pests.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Importers and Kenyan national plant protection organizations and producers.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC this 4th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–227 Filed 1–9–12; 8:45 am]

BILLING CODE 3410–34–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Friday, January 13, 2012, 2:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the

time and location listed above. At the meeting, the BBG will announce its meeting schedule for calendar year 2012, discuss and consider new BBG Committee assignments, and receive and consider recommendations regarding the implementation of the Agency's strategic plan for 2012–2016. The BBG will also consider a resolution on interference of BBG broadcasts as well as a resolution honoring the 70th anniversary of the Voice of America (VOA), recognize the anniversaries of Agency language services, receive a budget update, and receive and consider a proposal to repurpose Internet censorship circumvention funds. The BBG will receive reports from the International Broadcasting Bureau Director, the VOA Director, the Office of Cuba Broadcasting Director, and the Presidents of Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks. The meeting is open to public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *www.bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2012–314 Filed 1–6–12; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals and organizations to the Census Scientific Advisory Committee. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

DATES: Please submit nominations by February 9, 2012.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Office of External Engagement, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 763–8609, or by email to *jeri.green@census.gov.*

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Office of External Engagement, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Census Scientific Advisory Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2). The following provides information about the committee, membership, and the nomination process.

Objectives and Duties

1. The Census Scientific Advisory Committee advises the Director of the U.S. Census Bureau on the uses of scientific developments in statistical data collection, statistical analysis, survey methodology, geospatial analysis, econometrics, cognitive psychology, and computer science as they pertain to the full range of Census Bureau programs and activities (including: communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics).

2. The Census Scientific Advisory Committee provides scientific and technical expertise from the following disciplines: Demography, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, Information Technology and computing, marketing, communications, and other fields of expertise, as appropriate, to address Census Bureau program needs and objectives. This expertise is necessary to ensure that the Census Bureau continues to provide relevant and timely statistics used by federal, state, and local governments as well as business and industry in an increasingly technologically-oriented society.

3. The Census Scientific Advisory Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Census Scientific Advisory Committee reports to the Director of the Census Bureau.

Membership

1. The Census Scientific Advisory Committee will consist of no more than 20 members and one Chair appointed by the Director of the Census Bureau.

2. Members are appointed for a two or three-year term with staggered term-end dates.

3. Members shall serve as either Special Government Employees (SGEs) or Representatives. SGEs will be subject to the ethical standards applicable to SGEs. Members will be individually advised of the capacity in which they serve through appointment letters. Committee membership will be reevaluated at the conclusion of the two or three-year term with the prospect of member renewal, active attendance and participation in meetings, administrative compliance, Census Bureau needs, and the Director's concurrence will also be factors in renewals.

4. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Census Scientific Advisory Committee aims to have balanced representation, considering such factors as geography, technical, and scientific expertise. The Advisory Committee will include members from diverse backgrounds, including academia and private enterprise, which are further diversified by business type or industry, geography, and other factors.

5. No employee of the federal government can serve as a member of the Census Scientific Advisory Committee.

Miscellaneous

1. Members of the Census Scientific Advisory Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Census Scientific Advisory Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Advisory Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees must have scientific and technical expertise in such areas as demography, economics, geography, psychology, statistics, survey methodology, social and behavioral sciences, Information Technology, computing, or marketing. Such knowledge and expertise are needed to provide advice and recommendations to the Director of the Census Bureau on the trends, uses, and application of scientific innovations and developments in relation to the full range of Census Bureau programs and activities.

3. Individuals, groups, and/or organizations may submit nominations

on behalf of individual candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Census Scientific Advisory Committee, including, but not limited to, regular meeting attendance, committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

4. Nominations of organizations may come from individuals or organizations. Organizations also may self-nominate. A summary of the organization's qualifications and the experience that qualifies it for membership should be included in the nomination letter. Nominated organizations must be able to actively participate in the tasks of the Census Scientific Advisory Committee, including, but not limited to, regular meeting attendance, review of materials, and participation in conference calls, webinars, working groups, and special committee activities.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

Dated: January 3, 2012.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2012–169 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On September 7, 2011, the Department of Commerce (the Department) published the preliminary results of its 2009–2010 administrative review of the antidumping duty order of floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 76 FR 55357 (September 7, 2011). The current deadline for the final results of this review is January 5, 2012.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of this administrative review within 120 days after the date on which the preliminary results were published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, the Department may extend the time period to issue the final results. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

The Department finds that it is not practicable to complete this review within the original time frame. In order to fully evaluate the issues raised by all interested parties concerning the choice of surrogate country, the proper source of financial ratios, and other case issues, we are extending the time frame for completion of this review. Consequently, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time period for issuing the final results of review by 60 days. Therefore, the final results will be due no later than March 5, 2012.

This notice is published in accordance with section 777(i) of the Act.

Dated: January 3, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–245 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2011, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781, 37785 (June 28, 2011). This review covers the period May 1, 2010, through April 30, 2011. The preliminary results of review are currently due no later than January 31, 2012.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of citric acid from the PRC within this time limit. Specifically, additional time is needed to issue supplemental questionnaires, analyze questionnaire responses, and consider relevant evidence and parties' comments regarding selecting appropriate surrogate values with which to value factors of production. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days. The preliminary results will now be due no later than April 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: January 4, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–236 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: January 10, 2012.

SUMMARY: The Department of Commerce (the ''Department'') is currently conducting a new shipper review (''NSR'') of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') for the period of January 1, 2011, through June 30, 2011. As discussed below, we preliminarily determine that the producer and exporter Marvin Furniture (Shanghai) Co., Ltd. (''Marvin Furniture'') did not satisfy the regulatory requirements to request an NSR; therefore, we are preliminarily rescinding this NSR. We invite interested parties to comment on these preliminary results. *See* ''Comments'' section below.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0989 or (202) 482–3627 respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on WBF from the PRC was published on January 4, 2005.[1] On August 1, 2011, the Department received a request for an NSR from Marvin Furniture. On August 11, 2011, the Department issued a supplemental questionnaire to Marvin Furniture requesting further information regarding its sales and shipment for which Marvin Furniture requested the NSR. On August 19, 2011, Marvin Furniture submitted its response to the Department's supplemental questionnaire and the Department placed on the record of this review U.S. Customs and Border Protection (''CBP'') data for entries of WBF imported from the PRC. On August 19, 2011, the Department also sent Marvin Furniture a supplemental questionnaire regarding the results of the CBP data query. On August 24, 2011, Marvin Furniture provided comments on the CBP data. On August 25, 2011, the Department initiated this NSR. *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 76 FR 54208 (August 31, 2011) (''*Initiation Notice*'').

On August 26, 2011 and August 31, 2011, Marvin Furniture responded to the Department's August 19, 2011 supplemental questionnaire regarding the results of the CBP query. On September 7, 2011, the Department issued a supplemental questionnaire to Marvin Furniture asking it to provide documentation for the responses Marvin Furniture provided in its submissions dated August 26, 2011, and August 31, 2011. On September 14, 2011, Marvin Furniture responded to the Department's September 7, 2011 supplemental questionnaire and submitted copies of its entry documents.

On September 19, 2011, the Department sent Marvin Furniture another supplemental questionnaire regarding certain entries. On September 27, 2011, Marvin Furniture responded to the Department's September 19, 2011 supplemental questionnaire. On September 30, 2011, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively ''Petitioners'') submitted comments on Marvin Furniture's eligibility for its NSR. On October 14, 2011, Marvin Furniture submitted rebuttal comments to Petitioners' statements.

On August 30, 2011, the Department issued the antidumping questionnaire to Marvin Furniture. On October 24, 2011, and on November 2, 2011, the Department issued supplemental questionnaires to Marvin Furniture regarding its responses to the antidumping questionnaire. During the period September through November 2011, Marvin Furniture responded to the Department's antidumping questionnaire and related supplemental questionnaires. On December 9, 2011, the Department placed certain CBP Entry Documents on the record.

Period of Review

Pursuant to 19 CFR 351.214(g), the period of review (''POR'') for this NSR is the semi-annual period of January 1, 2011 through June 30, 2011.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[2] highboys,[3] lowboys,[4] chests of drawers,[5] chests,[6] door chests,[7]

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

chiffoniers,[8] hutches,[9] and armoires; [10] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [11] (9) jewelry armories; [12] (10) cheval mirrors; [13] (11) certain metal parts; [14] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds [15] and (14) toy boxes.[16]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (''HTSUS'') as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041.[17] Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Rescission of the Antidumping New Shipper Review of Marvin Furniture

The NSR provisions of the Department's regulations require that the entity making that request for an NSR must document and certify, among other things: (1) The date on which subject merchandise of the exporter or producer making the request was first entered or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv). If these provisions, among others, are met, the Department will initiate an NSR to establish an individual weighted-average dumping margin for the new shipper. *See generally* 19 CFR 351.214(b)(2).

In its request for an NSR, Marvin Furniture provided certified statements that its first entry of subject merchandise into the United States entered on June 20, 2011, and that it had multiple sales, which took place on June 27, 2011, and June 28, 2011. *See* Letter

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[13] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[15] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[16] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[17] On October 27, 2011, CBP provided notification that HTSUS number 9403.90.8041 should be added to the scope of the order, as certain articles under this number may fall within the scope. *See* Memorandum from Patrick O'Connor to the File, ''Request for Customs and Border Protection to Update AD/CVD Module for Wooden Bedroom Furniture from the People's Republic of China,'' dated January 4, 2012.

from Marvin Furniture to the Secretary of Commerce ''Request for Initiation of Antidumping New Shipper Review,'' dated July 30, 2011. Based on this information, the Department initiated the NSR for Marvin Furniture. *See Initiation Notice.*

However, based on an analysis of CBP data, the CBP Entry Documents, and Marvin Furniture's supplemental questionnaire responses, the Department has determined that Marvin Furniture had additional entries that were not reported to the Department in its request for an NSR under 19 CFR 351.214(b)(2)(iv). As noted, in order to qualify for an NSR under 19 CFR 351.214, a company must certify and document among other things, the date of its first entry and the volume of that and subsequent shipments to the United States. *Id.* Because Marvin Furniture had additional entries of subject merchandise to the United States prior to the POR that it did not report to the Department in its request for an NSR, the Department has preliminarily found that Marvin Furniture's request for an NSR did not satisfy the regulatory requirements for requesting an NSR, and the Department thus preliminarily determines that it is appropriate to rescind the NSR for Marvin Furniture. As much of the factual information used in our analysis for the rescission of Marvin Furniture's NSR involves business proprietary information, a full discussion of the basis for our preliminary results is set forth in the Memorandum to Abdelali Elouaradia, AD/CVD Operations, Office 4, ''Preliminary Analysis of Marvin Furniture (Shanghai) Co., Ltd.'s Previous Entries in the Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China,'' dated concurrently with this notice.

Assessment Rates

If the Department proceeds to a final rescission of Marvin Furniture's NSR, the assessment rate to which Marvin Furniture's shipments will be subject will not be affected by this review. The assessment rate, however, could change if the Department conducts an administrative review of the antidumping duty order on WBF from the PRC covering the period of January 1, 2011, through December 31, 2011. Thus, if we proceed to a final rescission, we will instruct CBP to continue to suspend entries during the period January 1, 2011, through December 31, 2011, of subject merchandise exported by Marvin Furniture until CBP receives instructions relating to an administrative review of the WBF order covering the period January 1, 2011, through December 31, 2011.

Cash Deposit Requirements

If the Department proceeds to a final rescission, effective upon publication of the final rescission of the NSR, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise exported by Marvin Furniture. Also, if we proceed to a final rescission of the NSR, the cash deposit rate will continue to be the PRC-wide rate for entries exported by Marvin Furniture.

Disclosure

We will disclose our analysis memorandum to the parties to this proceeding not later than five days after the date of public announcement, or, if there is no public announcement, within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties are requested to provide a summary of their arguments not to exceed five pages, and a table of the statutes, regulations, and cases cited.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final rescission or final results of this NSR, including the results of our analysis of issues raised in any briefs, not later than 90 days after this preliminary rescission is issued, unless the deadline for the final rescission or final results is extended. *See* 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to the importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The NSR and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.214(f).

Dated: January 4, 2012.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–238 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on honey from Argentina. The review covers imports of subject merchandise from nine companies. The period of review (POR) is December 1, 2009, through November 30, 2010. We preliminarily determine that sales of honey from Argentina have not been made below normal value (NV) by mandatory respondents TransHoney S.A. (TransHoney) and Compañía Inversora Platense S.A. (CIPSA) during the POR. In addition, we have preliminarily determined a margin for those companies that were not selected for individual examination. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* January 10, 2012.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue NW., Room 7850, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001). On December 1, 2010, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). In response, the Department received the following requests for review:

On December 29 and 30, 2010, Algodonera Avellaneda, S.A. (Algodonera) and Nexco S.A. (Nexco), respectively, requested administrative reviews of the antidumping duty order on honey from Argentina for the POR. On January 3, 2011,[1] A.G.L.H. S.A., (AGLH), CIPSA, Industrial Haedo S.A. (Haedo), Mielar S.A./Compañía Apícola Argentina S.A. (Mielar), Patagonik S.A. (Patagonik), and TransHoney also requested administrative reviews.

Also on January 3, 2011, the American Honey Producers Association and Sioux Honey Association (collectively, the petitioners) requested that the Department conduct administrative reviews of entries of subject merchandise made by 21 Argentine producers/exporters.[2]

On January 13, 2011, the petitioners withdrew their request for an antidumping duty administrative review of ACA.

On January 28, 2011, the Department initiated a review of the 20 remaining companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) (*Initiation Notice*).

On February 2, 2011, Alma Pura submitted a letter certifying that, during the POR, it had no shipments, sales, or U.S. entries of subject merchandise and requested that the Department rescind the administrative review with respect to Alma Pura.

On February 7, 2011, the Department issued a memorandum to the file indicating its intention to limit the number of respondents selected for review and to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of Argentine honey during the POR. The Department encouraged all interested parties to submit comments regarding the use of CBP entry data for respondent selection purposes. *See* Memorandum to the File through Richard Weible, Director, Office 7, AD/CVD Operations, regarding ''Honey from Argentina—United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review,'' dated February 7, 2011.

On February 24, 2011, the Department published a subsequent initiation notice which included corrections to the *Initiation Notice* with respect to honey from Argentina. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 10329 (February 24, 2011) (*Second Initiation Notice*).[3]

On March 18, 2011, the Department selected the two producers/exporters with the largest export volume during the POR as mandatory respondents: HoneyMax and Nexco. *See* Memorandum to Richard O. Weible, ''Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum,'' dated March 18, 2011. On March 18, 2011, the Department issued its antidumping questionnaire to the two mandatory respondents.

On April 8, 2011, and pursuant to 19 CFR 351.213(d)(1), the petitioners timely withdrew their request for review of the following companies: (1) Alimentos Naturales-Natural Foods Lavalle; (2) Alma Pura; (3) Apidouro Comercial Exportadora E Importadora Ltda.; (4) Bomare S.A.; (5) HoneyMax; (6) Interrupcion S.A.; (7) Miel Ceta SRL; (8) Nexco; (9) Productos Afer S.A.; and (10) Seabird Argentina S.A.

Also on April 8, 2011, and pursuant to 19 CFR 351.213(d)(1), Nexco withdrew its request for review and asked that the Department rescind the review in part.

Accordingly, the Department informed interested parties of its intent to rescind the review for the ten companies for which the petitioners and Nexco withdrew requests for review. In addition, in place of Nexco and HoneyMax, the Department selected two new producers/exporters with the largest export volume during the POR as mandatory respondents, CIPSA and TransHoney. *See* Memorandum to Richard O. Weible, ''Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum,'' dated May 9, 2011.

On May 11, 2011, the Department issued its antidumping questionnaire to CIPSA and TransHoney. The Department extended the time limits for the preliminary results of this review and rescinded the review for the ten companies mentioned above on September 7, 2011. *See Honey From Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 55349 (September 7, 2011).

CIPSA

On June 15, 2011, CIPSA filed its response to section A of the Department's questionnaire (CIPSA AQR). On June 29, 2011, CIPSA filed its response to sections B and C of the Department's questionnaire (CIPSA BQR and CIPSA CQR). On July 28, 2011, and October 3, 2011, the Department issued supplemental questionnaires to CIPSA. CIPSA filed responses to the supplemental questionnaires on August 18, 2011 (CIPSA 1SQR) and October 17, 2011.

TransHoney

On June 23, 2011, TransHoney filed its response to the Department's section A questionnaire (TransHoney AQR). On June 29, 2011, TransHoney filed its response to sections B and C of the Department's questionnaire (TransHoney BQR and TransHoney CQR). On August 1, 2011, and September 22, 2011, the Department issued supplemental questionnaires to TransHoney. TransHoney filed responses to the supplemental questionnaires on August 22, 2011, September 1, 2011 (TransHoney 1SQR) and October 6, 2011.

[1] The Department stated that parties had the opportunity to request a review until the last day of December 2010, ''{o}r the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.'' *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR at 74682. Because December 31, 2010, was a Federal holiday, and January 1 and 2, 2011, fell on a weekend, the next business day was January 3, 2011.

[2] The petitioners requested reviews for AGLH, Algodonera, Nexco, Haedo, Mielar, CIPSA, Patagonik, TransHoney, Asociacion de Cooperativas Argentinas Av. (ACA), HoneyMax S.A. (HoneyMax), Alma Pura S.A. (Alma Pura), Alimentos Naturales-Natural Foods Lavalle, Apidouro Comercial Exportadora E Importadora Ltda., Bomare S.A., Compania Apicola Argentina S.A., El Mana S.A., Interrupcion S.A., Miel Ceta SRL, Productos Afer S.A., Seabird Argentina S.A., and Villamora S.A.

[3] In Nexco's review request, Nexco also requested revocation from the antidumping duty order on honey from Argentina (in part). However, Nexco's request for revocation in part from the order was inadvertently omitted from the *Initiation Notice.* Furthermore, certain company names were misspelled in the *Initiation Notice.* All errors were corrected in the *Second Initiation Notice.*

Period of Review

The POR is December 1, 2009, through November 30, 2010.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Rescission, in Part, of Administrative Review

Pursuant to 19 CFR 351.214(j), the Secretary may, after consulting with the exporter or producer, rescind in whole or in part a review in progress under this subpart if a separate review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section. On November 30, 2011, the Department published the final results of a new shipper review of this antidumping duty order covering exports of Villamora S.A. for the period December 1, 2009, through November 30, 2010, the same time period as this POR. *See Honey From Argentina: Final Results of Antidumping Duty New Shipper Review,* 76 FR 74044 (November 30, 2011). After consulting with Villamora S.A., the Department is rescinding, in part, the antidumping duty administrative review on honey from Argentina for the period December 1, 2009 to November 30, 2010, with respect to Villamora S.A. *See* Memorandum to the File: 2009/2010 Administrative Review of the Antidumping Duty Order on Honey from Argentina: Telephone Conversation with Counsel for Villamora S.A. (Villamora), dated December 6, 2011.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we considered all sales of honey covered by the description in the ''Scope of the Order'' section of this notice, *supra,* which were sold in the appropriate third-country markets during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. For our discussion of market viability and selection of comparison markets, *see* the ''Normal Value'' section of this notice, *infra.* We matched products based on the physical characteristics reported by CIPSA and TransHoney. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as export price (EP) or the constructed export price (CEP). The NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act. *See* 19 CFR 351.412(c)(1)(ii). For EP, it is the starting price. *See* 19 CFR 351.412(c)(1)(i). In this review, all mandatory respondents claimed only EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

CIPSA reported that all of its third-country and U.S. market sales were made to importer/distributors or importer/packers at the same LOT. *See* CIPSA AQR at A–9 to A–13 and Exhibit A.3, CIPSA BQR at B–19, CIPSA CQR at C–16, and CIPSA 1SQR at 8–9, 17–18. TransHoney reported a single LOT for all U.S. and third-country market sales and the same channel of distribution. *See* TransHoney AQR at A–10 to A–15 and Exhibit A.3, TransHoney BQR at B–18, TransHoney CQR at C–16, and TransHoney 1SQR at 16 and Exhibit A.14.

The Department has determined that differing channels of distribution, alone, do not qualify as separate LOTs when selling functions performed for each customer class are sufficiently similar. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45022 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); *see also* 19 CFR 351.412(c)(2). TransHoney and CIPSA reported a single LOT for all U.S. and third-country sales. CIPSA and TransHoney claimed that their selling activities in both markets are essentially identical, and nothing on the record appears to suggest otherwise. Therefore, for TransHoney and CIPSA, we preliminarily determine that all reported sales are made at the same LOT, and have not made a LOT adjustment.

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. For CIPSA, the Department used the invoice date as the date of sale for both its comparison and U.S. market sales for these preliminary results. CIPSA asserts that changes in ordered terms have occurred in the past and its customers know they can request changes to an order prior to shipment. *See* CIPSA 1SQR at 10. As in past segments of this proceeding, we preliminarily determine that there is potential for change to the essential terms of sale between the contract date and invoice date and therefore invoice date continues to be the appropriate

date of sale with respect to CIPSA's sales in the U.S. and third-country markets because of the potential for change to the essential terms of sale between the order date and invoice date.

For TransHoney, the Department, consistent with its practice, used the reported date of invoice as the date of sale for both the third-country and U.S. markets. TransHoney states that changes to the essential terms of sale can occur between the order date and invoice date, which is coincident with the date of actual shipment. *See* TransHoney AQR at A–17, and TransHoney 1SQR at 26–27. Consequently, we preliminarily find that invoice date is the appropriate date of sale with respect to TransHoney's and its affiliated entity's [4] sales in the U.S. and comparison markets.

Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under {section 772(c) of the Act}.'' Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,'' as adjusted under sections 772(c) and (d) of the Act. For purposes of this administrative review, CIPSA and TransHoney classified their U.S. sales as EP because all of their sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications. We based EP on prices to unaffiliated customers in the United States and made adjustments for movement expenses.

Normal Value

Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared CIPSA's and TransHoney's respective aggregate volume of home market sales of the foreign like product to their respective aggregate volume of U.S. sales of subject merchandise. CIPSA's volume of home market sales did not exceed five percent of the aggregate volume of U.S. sales; TransHoney had no home market sales during the POR. As a result, we preliminarily find that neither CIPSA's nor TransHoney's home markets provide a viable basis for calculating NV.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (i) The prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the EP or CEP. In terms of volume of sales (and with five percent or more of sales by quantity to the United States), TransHoney and CIPSA both reported Italy as their third-country markets during the POR.

The record shows the aggregate quantities of TransHoney's and its affiliate [5] Einsof Trade S.A. (Einsof)'s, as well as CIPSA's, sales to Italy are greater than five percent of TransHoney's and CIPSA's sales to the United States. In addition, the Department preliminarily determines there is no evidence on the record to demonstrate that these prices in Italy are not representative. *See* TransHoney AQR at Exhibit A.1 and CIPSA AQR at Exhibit A.1. Nor is there evidence that any other third-country market to which TransHoney or CIPSA sells would offer greater similarity of product to that sold to the United States. Further, we find there is no particular market situation in Italy with respect to TransHoney or Einsof or CIPSA that would prevent a proper comparison to EP. As a result, we preliminarily find TransHoney's and its affiliate's, along with CIPSA's, sales to Italy serve as the most appropriate basis for NV.

Therefore, NV for both companies is based on its third-country sales to unaffiliated purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and at the same LOT as the EP. We calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice, *infra.*

Affiliation

According to section 771(33) of the Act, the Department determines affiliation using a variety of criteria. TransHoney submitted, as part of its sales database, the third-country market sales made by another Argentine exporter, Einsof, a company with which TransHoney claims to be affiliated. To determine affiliation between companies, the Department analyzed in the immediately preceding administrative review of this order, TransHoney's responses and found that, pursuant to section 771(33)(F) of the Act, TransHoney and Einsof are affiliated because they are under common control. Specific matters related to the common control are proprietary in nature. For further details, *see* Memorandum to the File, ''2009/2010 Administrative Review of the Antidumping Duty Order on Honey from Argentina: Analysis of the Relationship Between TransHoney S.A. (TransHoney) and Einsof Trade S.A. (Einsof),'' dated January 3, 2012. The memorandum includes the Memorandum to Richard Weible, ''Antidumping Duty Administrative Review of Honey from Argentina: Analysis of the Relationship Between TransHoney S.A. (TransHoney) and Einsof Trade S.A. (Einsof),'' dated January 7, 2011, (TransHoney/Einsof Affliation Memorandum), which has been placed on the record of this review, as well as a discussion of any differences between the previous review and this one with respect to affiliation issues concerning TransHoney and Einsof.

Furthermore, in certain circumstances the Department will treat two or more affiliated producers as a single entity and determine a single weighted-average margin for that entity, in order to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law. *See* 19 CFR 351.401(f).

While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis. *See* TransHoney/Einsof Affiliation Memorandum; *see, e.g., Honey from Argentina: Final Results of Antidumping Duty Administrative*

[4] *See* ''Affiliation'' section below.

[5] *See* ''Affiliation'' section, *infra.*

Review, 70 FR 19926, 19926 (April 15, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a ''reasonable interpretation of the {antidumping duty} statute.'' *See Hontex Enterprises, Inc.* v. *United States,* 248 F. Supp. 2d. 1323, 1338 (CIT 2003) (*Hontex*). The CIT further noted that ''to the extent that Commerce has followed its market economy collapsing regulations the {non-market economy (NME)} exporter collapsing methodology is necessarily permissible.'' *See id.* at 1342.

During the 2008–2009 administrative review, the Department determined that TransHoney and Einsof should be treated as a single entity. After reviewing information on the record, the Department preliminarily determines that the fact pattern in this POR is substantially similar to the fact pattern in the 2008–2009 review of the order covering these companies. The Department preliminarily finds that, based on management overlap and intertwined relations, the relationship between these companies is such that both should be treated as a single entity for purposes of this administrative review and should receive a single antidumping duty rate. For further details, *see* TransHoney/Einsof Affiliation Memorandum.

Price-to-Price Comparisons

CIPSA

We calculated NV based on prices to unaffiliated purchasers in the third-country market and matched U.S. sales to NV. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstances-of-sale adjustments for credit and other direct selling expenses (*e.g.,* certain Argentine government-requested testing expenses) in accordance with section 773(a)(6)(C) of the Act. Additionally, we reclassified one of CIPSA's reported direct selling expenses (*e.g.,* certain customer-requested testing expenses) as an indirect selling expense. We also made further deductions to price for certain movement expenses (offset for reported freight revenue), where appropriate, pursuant to section 772(c)(2)(A) of the Act. *See* Analysis of Data Submitted by Compañía Inversora Platense S.A. (CIPSA) for the Preliminary Results of the Antidumping Duty Administrative Review of Honey from Argentina, dated January 3, 2012.

TransHoney

We calculated NV based on prices to unaffiliated purchasers in the third-country market and matched U.S. sales to NV. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstances-of-sale adjustments for credit and other direct selling expenses (*i.e.,* certain Argentine government-requested testing expenses) in accordance with section 773(a)(6)(C) of the Act. Additionally, we reclassified one of TransHoney's reported direct selling expenses (namely, certain customer-requested testing expenses) as an indirect selling expense. We also disregarded certain claimed commissions and insurance expenses. *See* Analysis of Data Submitted by TransHoney S.A. (TransHoney) for the Preliminary Results of the Antidumping Duty Administrative Review of Honey from Argentina, dated January 3, 2012.

Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France,* 68 FR 47049, 47055 (August 7, 2003) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003)). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions from Argentine pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones retrieval service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exist for the period December 1, 2009, through November 30, 2010:

Exporter	Weighted-average margin (percentage)
Compañía Inversora Platense S.A.	0.00
TransHoney S.A. and Einsof Trade S.A.	0.00
AGLH S.A.	0.77
Algodonera Avellaneda S.A.	0.77
Compañía Apicola Argentina S.A .	0.77
El Mana S.A.	0.77
Industrial Haedo S.A.	0.77
Mielar S.A.	0.77
Patagonik S.A.	[1] 0.27

[1] (*de minimis*).

We have preliminarily assigned to six of the seven non-selected companies subject to this review listed above the rate of 0.77 percent, which was calculated in the Department's 2006–2007 administrative review of Patagonik S.A.; the most recent above *de minimis* rate from a completed segment of this proceeding. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 74 FR 32107 (July 7, 2009). In instances where the selected respondent companies have rates of zero, the Department's normal practice is to assign to the non-selected companies the most recent calculated rate from a prior completed segment of the proceeding that is not zero or *de minimis,* and not based entirely on facts available (or average of such rates). *See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part,* 76 FR 40329, 40332 (July 8, 2011) (unchanged in *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part,* 76 FR 69702 (November 9, 2011)). Also consistent with our practice, if any non-selected companies have their own calculated (non-adverse facts available) rate that is contemporaneous with or more recent than this rate, then the companies will receive that rate. Thus, we have preliminarily assigned to Patagonik S.A. its current *de minimis* rate of 0.27 percent, which was calculated in the 2008–2009 administrative review of the order. *See Honey From Argentina: Final Results of Antidumping Duty Administrative Review,* 76 FR 29192 (May 20, 2011).

Following these preliminary results, we intend to request from all non-selected companies certain information regarding sales of honey made to the United States during the POR to

determine the appropriateness of our preliminary margin assignments for these companies. We will invite parties to consider any such information in their comments for purposes of our final results of this review.

Disclosure and Request for Public Hearing and Comments

The Department will disclose the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), where entered values were reported, we calculated importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. Where entered values were not reported, we calculated importer- or customer- (where the importer was unknown) specific per-unit assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity of the sales used to calculate those duties. These rates will be assessed uniformly on all of CIPSA's and TransHoney's entries made during the POR. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

To calculate the cash deposit rates for TransHoney and CIPSA, we divided their total dumping margins by the total net value of each of their sales during the review period. For the companies which were not selected for individual review, we have calculated a cash deposit rate based on the simple average of the rates determined for TransHoney and CIPSA for the period December 1, 2009, through November 31, 2010.

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for any previously-reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate from the investigation (30.24 percent). *See Notice of Antidumping Duty Order; Honey From Argentina,* 66 FR at 63673. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2012.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–234 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 From the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 6, 2011, the Department of Commerce (the Department) published the preliminary intent to rescind the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP–23) from the People's Republic of China (PRC).[1] This administrative review covers Toyo Ink Mfg. America, LLC and Toyo Ink Mfg. Co., Ltd. (collectively, Toyo) for the December 1, 2009, through November 30, 2010, period of review (POR). Toyo provided a certification of no sales. As the Department's review of U.S. Customs and Border Protection (CBP) import data confirmed that there

[1] *See Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Intent To Rescind Antidumping Duty Administrative Review,* 76 FR 55003 (September 6, 2011) (*Preliminary Results*).

were no reviewable entries of the subject merchandise during the POR, we preliminarily determined that Toyo did not have reviewable entries during the POR. Therefore, because there were no entries on which to assess duties, the Department preliminarily determined to rescind this review and gave interested parties an opportunity to comment. We did not receive comments on the *Preliminary Results.* We are therefore rescinding the administrative review of the antidumping duty order on CVP–23 from the PRC.

DATES: *Effective Date:* January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on September 6, 2011, the Department published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on CVP–23 from the PRC. The Department did not receive comments from interested parties on our *Preliminary Results.*

Scope of the Order

The merchandise covered by this order is carbazole violet pigment 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2–b:3',2'-m] triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-dihydro-, and molecular formula of C 34 H 22 C l2 N 4 O 2.[2] The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of this order. The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[2] The brackets do not indicate ''business proprietary information'' but rather are part of the chemical formula.

Rescission of the Review

Based on its analysis of the record information, the Department preliminarily determined that the merchandise in the CBP data and the entry documentation on the record was not subject to the scope of the antidumping duty order on CVP–23 from the PRC. Accordingly, in the *Preliminary Results,* the Department indicated that it intended to rescind this administrative review because there was no information on the record which indicated that Toyo made sales, shipments, or entries to the United States of subject merchandise during the POR. We did not receive comments concerning the *Preliminary Results.* Therefore, the Department continues to find that the merchandise reflected in the CBP data and entry documentation on the record is not subject to the scope of the antidumping duty order on CVP–23 from the PRC. Furthermore, because Toyo is the only company subject to this administrative review, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[3] we are rescinding this review of the antidumping duty order on CVP–23 from the PRC for the December 1, 2009, through November 30, 2010 POR. The Department intends to instruct CBP fifteen days after the publication of this notice to liquidate such entries with respect to the PRC-wide entity.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: January 3, 2012.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–248 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Pure Magnesium From the People's Republic of China: Rescission of Antidumping Duty Administrative Review,* 76 FR 53408 (August 26, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 10, 2012.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC) covering the period of review (POR) of December 1, 2009, through November 30, 2010. We preliminarily determine that sales made by New-Tec Integration (Xiamen) Co., Ltd. (New-Tec), were below normal value (NV) at a *de minimis* level. We invite interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2924, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2004, the Department published in the **Federal Register** the antidumping duty order on hand trucks from the PRC. *See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China,* 69 FR 70122 (December 2, 2004). On December 1,

2010, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on hand trucks from the PRC covering the POR of December 1, 2009, through November 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 74682 (December 1, 2010). On January 28, 2011, the Department published in the **Federal Register** a notice of initiation of the antidumping duty administrative review of hand trucks from the PRC with respect to New-Tec. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire to New-Tec on February 2, 2011, and received timely responses from New-Tec in March 2011. We issued supplemental questionnaires to New-Tec covering sections A, C, and D of the original questionnaire in May 2011, August 2011, and November 2011 and received timely responses to those questionnaires.

On September 29, 2011, and November 7, 2011, respectively, we received separate rate applications from Yangjiang Shunhe Industrial Co., Ltd. (Yangjiang Shunhe) and Welcom Products Inc. (Welcom).

Period of Review

The POR is December 1, 2009, through November 30, 2010.

Scope of the Order

The merchandise subject to the antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof. A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of the order. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the order. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the order. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the order.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8-inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008); and *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009). In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment or provided record evidence for us to reconsider our continued treatment of the PRC as an NME. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate.

It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

In the *Initiation Notice,* the Department stated that all firms that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification. *See Initiation Notice,* 76 FR at 5138. To establish separate-rate eligibility, the Department requires entities for which a review was requested, that were assigned a separate rate in the most recent segment of the proceeding in which they participated, to certify that they continue to meet the criteria for

obtaining a separate rate. In this administrative review, Yangjiang Shunhe and Welcom each submitted a separate-rate application long after the 60-day deadline (September 29, 2011, and November 7, 2011, respectively) for when separate rate applications were due (*i.e.,* March 29, 2011). The Department generally will not accept separate rate requests from companies that were not requested to be reviewed. *See Initiation Notice* (''All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below''). Because no request for review of Yangjiang Shunhe and Welcom was submitted by an interested party, we did not initiate an administrative review with regard to either company's shipments of subject merchandise. Accordingly, we preliminarily determine that neither firm is eligible to apply for a separate-rate in this review.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. In this review, New-Tec submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted by New-Tec includes government laws and regulations on corporate ownership and control (*i.e.,* the Foreign Trade Law of the People's Republic of China and the Law of the People's Republic of China on Foreign Joint Ventures), its individual business license, and narrative information regarding its operations and selection of management. The evidence provided by New-Tec supports a preliminary finding of a *de jure* absence of government control over its export activities. Specifically, record evidence indicates that: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) the government has taken formal measures to decentralize control of companies. *See* New-Tec's March 2, 2011, submission at 2–10.

Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the company: (1) Sets its own export prices independent of the government and without the approval of a government authority; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its March 2, 2011 submission, New-Tec submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors; (5) the general manager appoints the other management personnel; and (6) there are no restrictions on the company's use of export revenues.

Therefore, we preliminarily find that New-Tec has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.[1] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries that are producers of comparable merchandise. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). In the current segment of the proceeding, we received comments regarding surrogate country selection only from New-Tec. New-Tec argued that Thailand was the most comparable economically to the PRC and was a significant producer of hand trucks during the POR. *See* New-Tec's December 1, 2011 submission at 2. Among the countries identified as economically comparable to the PRC, based on record evidence, we find that Thailand is the most appropriate surrogate country for valuing FOPs because it is a significant producer of comparable merchandise, and we have reliable, publicly-available data from Thailand representing broad-market averages. Although New-Tec has submitted a financial statement from an Indian company producing identical merchandise, we note that New-Tec does not propose using India as a potential surrogate country. In addition, because we have determined that Thailand is both economically comparable to the PRC and a producer of comparable merchandise, and that Thai data is both publicly available and reliable, we need not resort to an alternative surrogate country which is not as economically comparable to the PRC as the countries on the Surrogate Country List. *See* 773(c)(4) of the Act; *see also* Memorandum to the File, from Scott Hoefke, Analyst, Subject: Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Selection of a Surrogate Country, dated concurrently with this notice.[2]

[1] *See* Memorandum from Carole Showers, Director, Office of Policy, to Angelica Mendoza, Program Manager, Office 7; Subject: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Hand Trucks and Parts Thereof from the People's Republic of China, dated August 15, 2011 (Surrogate Country List). The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC in terms of per capita gross national income.

[2] In the most recently completed proceeding involving the order, India was included in the

U.S. Price

Pursuant to 19 CFR 351.401(i), we used invoice date as the date of sale. Because record evidence indicated the terms of New-Tec's U.S. sales changed following the contract date, we determine that invoice date better reflects when the material terms of sale are set. *See* 19 CFR 351.401(i); *see also* New-Tec's June 16, 2011 submission at 1.

In accordance with section 772(a) of the Act, we based New-Tec's U.S. prices on export prices, because its first sales to an unaffiliated purchaser were made before the date of importation and the use of constructed export price was not otherwise warranted by the facts on the record. As appropriate, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. These services were provided by NME vendors for New-Tec's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values. *See* Memorandum to the File, ''Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China: Surrogate Values for the Preliminary Results'' (New-Tec Surrogate Values Memorandum), dated concurrently with this notice, at Exhibit 6.

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2011: Thailand.* This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Thailand to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Thailand's largest city, Bangkok, to the nearest seaport. We calculated a per-kilogram, per-kilometer surrogate inland freight rate of 0.0008 U.S. dollars per kilometer per kilogram based on using the full capacity of a 20-foot container as reported in the World Bank report. *See* New-Tec Surrogate Values Memorandum at Exhibit 6.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2011: Thailand,* published by the World Bank. *See* New-Tec Surrogate Values Memorandum at Exhibit 7.

Normal Value

1. Methodology

Section 773(c)(1)(A) and (B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise under review is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of the NME economy renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[3]

In accordance with section 773(c) of the Act, we calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs reported by New-Tec. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. *See* section 773(c)(3) of the Act. We valued the FOP that New-Tec reported by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor derived from the Thai surrogate values selected.

The Department used Thailand import statistics to value the raw material and packing material inputs that New-Tec used to produce the merchandise under review except where listed below. We used data from the Thailand import statistics in the Global Trade Atlas (GTA), published by Global Trade Information Services, Inc. The GTA reports import statistics, such as those from Thailand, in the original reporting currency and thus these data correspond to the original currency value reported by each country. The record shows that data in the Thailand import statistics, as well as those from the other Thailand sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[4]

As appropriate, we added freight costs to the surrogate values that we calculated for New-Tec's material inputs to make these prices delivered prices. We calculated these freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to New-Tec. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* New-Tec Surrogate Values Memorandum at Exhibit 8.

Other inputs consisted of water, electricity, carbon dioxide, and liquid petroleum gas. We valued electricity using an average price of energy sale to various customers as published by the Electrical Generating Authority of Thailand, Annual Report 2010: Key Statistical data. *See* New-Tec Surrogate Values Memorandum at Exhibit 4. To value water, the Department used the average of published water rates for Type 2 used by the Metropolitan Water Authority of Thailand, which are available at The Board of Investment of Thailand's Web site at *http://www.boi.go.th.* The Department found this source to be the best available information because it includes a wide range of industrial water rates. *See* New-Tec Surrogate Values Memorandum at Exhibit 4. We valued carbon dioxide and liquid petroleum gas using import statistics from the GTA as described above. *See* New-Tec Surrogate Values Memorandum at Exhibit 3.

New-Tec reported that scrap material are produced in the production process of hand trucks. New-Tec gathers all of the recovered material, weighs it, and

Surrogate Country Memorandum. We determined that India was comparable to the PRC in terms of economic development and had surrogate value data that were publically available and reliable. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review,* 76 FR 36083 (June 21, 2011) (*Hand Trucks 08/09 Final*). Our position is that India may still be economically comparable, but is less so than those on the Surrogate Country List. Because Thailand meets all of our selection criteria, the Department has selected Thailand as the primary surrogate country for this administrative review.

[3] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006).

[4] *See* New-Tec Surrogate Values Memorandum.

then sells it to an unaffiliated outside party. *See* New-Tec's March 23, 2011 submission at 47. Therefore, we offset New-Tec's material costs for revenue generated from the sale of recovered steel and aluminum. *See* New-Tec Surrogate Values Memorandum at Exhibit 3.

Thai surrogate values were denominated in baht and were converted to U.S. dollars using the applicable average exchange rate based on exchange rate data from the Department's Web site. For further details regarding the surrogate values used for these preliminary results *see* New-Tec Surrogate Values Memorandum.

New-Tec reported that several of its raw materials were produced in market-economy countries and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market-economy supplier in meaningful quantities (*i.e.,* thirty-three percent or more not in an NME country), the Department normally will use the actual price paid by the respondent for those inputs.[5] Because information reported by New-Tec demonstrates that it purchased meaningful quantities of certain inputs (*e.g.,* hot-rolled steel, aluminum ingots, rubber wheels and various fasteners) produced in market economies, the Department used New-Tec's actual market-economy purchase prices to value its FOPs for these inputs because these prices constitute the best available information to value these FOPs. Where appropriate, we added freight expenses to the market-economy prices for these inputs. New-Tec also made market economy purchases that record evidence show were produced in a market economy but the purchased quantities were not meaningful (*i.e.,* less than 33 percent of the total purchases). We valued such inputs (cold-rolled steel and polypropylene resin) using a weighted-average of the volume demonstrated to be manufactured in and purchased from a market-economy country valued using the market-economy price and the volume manufactured in an NME valued using a surrogate value.[6]

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2009–2010 financial statement of Prohandlift Equipment Company Limited (Prohandlift). Prohandlift is a producer of comparable merchandise in Thailand. Its financial ratios for OH and SG&A expenses are comparable to New-Tec's financial ratios by virtue of each company's production of comparable merchandise. *See* New-Tec Surrogate Values Memorandum at Exhibit 8.

2. Selection of Surrogate Values

In selecting the ''best available information for surrogate values'' (*see* section 773(c)(1) of the Act) consistent with the Department's practice, we considered whether the information was publicly available, product-specific, representative of broad market average prices, contemporaneous with the POR, and free of taxes.[7] We also considered the quality of the source of surrogate information. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act the Department continues to disregard surrogate values if it has a reason to believe or suspect the source data may be subsidized.[8] In this regard, the Department has previously found that it is appropriate to disregard prices based upon exports from India, Indonesia, and South Korea because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, and South Korea may have benefitted from these subsidies.[9] Additionally, we disregarded prices from NME countries. Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[10]

On June 21, 2011, the Department announced its new methodology to value the cost of labor in NME countries. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).[11] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).

As announced above, the Department's latest methodology is to use data reported under Chapter 6A by the ILO. For this review the Department found that Thailand last reported data in 2000 for data 6A for Thailand under Sub-Classification 34 of the ISIC–Revision 3. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total labor data reported by Thailand to the ILO, in accordance with section 773 (c)(4) of the Act. For the preliminary results the calculated wage rate is 134.59 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the New-Tec Surrogate Values Memorandum.

As stated above, the Department used Thailand ILO data reported under

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27366 (May 19, 1997).

[6] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006). *See also Hand Trucks 08/09 Final,* and accompanying Issues and Decision Memorandum at Comment 1.

[7] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[8] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[9] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; and *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5.

[10] *See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review,* 75 FR 24578, 24582 (May 5, 2010), unchanged in *Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review,* 75 FR 61130 (October 4, 2010).

[11] This notice followed the Court of Appeals for the Federal Circuit in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010), found that the ''[regression-based] method for calculating wage rates [as stipulated by 19 CFR 351.408(c)(3)] uses data not permitted by [the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c))].''

Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to *Labor Methodologies,* the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (*e.g.,* general and administrative expenses). However, the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department made no adjustment to these financial statements.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Import Administration Web site at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period December 1, 2009, through November 30, 2010:

Manufacturer/exporter	Weighted-average margin (Percent)
New-Tec Integration (Xiamen) Co., Ltd	0.02

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. *See* 19 CFR 351.224(b). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. *See* 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for New-Tec will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this administrative review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 383.60 percent); and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: January 3, 2012.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–242 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time for Final Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0219.

Background

On December 13, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the new shipper review of certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2010, through January 31, 2011.[1] The final results are currently due no later than March 4, 2012.

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the New Shipper Review,* 76 FR 77485 (December 13, 2011).

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.214(i)(2) require the Department to issue the final results in a new shipper review of an antidumping duty order 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds this case to be extraordinarily complicated because there is voluminous new material on the record regarding the surrogate value of whole fish that has not yet been considered in a completed review. As a result, the Department will need more time to analyze the data. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time for the completion of the final results of this new shipper review by 60 days to May 3, 2012.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–239 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA922

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings regarding Amendment 11 to the Spiny Lobster Fishery Management Plan (FMP), Amendment 6 to the Golden Crab FMP and Amendment 18B to the Snapper Grouper FMP for the South Atlantic Region. The Council will concurrently hold a series of scoping meetings regarding Comprehensive Ecosystem-Based Amendment 3 and Amendment 9 to the Shrimp FMP for the South Atlantic Region. See **SUPPLEMENTARY INFORMATION**.

Dates and Location: The series of six public hearings will be held January 24, 2012 through February 2, 2012. The hearings will be held from 4 p.m. until 7 p.m. Council staff will present an overview of the amendments and will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing and scoping topics for consideration by the Council. Local Council representatives will attend the meetings and take public comment. Written comments will be accepted from January 13, 2012 until 5 p.m. on February 15, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

SUPPLEMENTARY INFORMATION: Actions in Spiny Lobster Amendment 11 include the creation of new closed areas in the Exclusive Economic Zone (EEZ) off the coast of Florida to help protect threatened staghorn and elkhorn coral colonies as well as gear marking requirements. Actions in Golden Crab Amendment 6 pertain to catch shares in this fishery. Amendment 18B to the Snapper Grouper FMP would limit participation in the golden tilefish fishery through the establishment of endorsements for the longline and hook-and-line sectors. Additionally, this amendment considers changes to the fishing year and trip limits as well as an allocation of an Annual Catch Limit (ACL) between gear groups.

Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3) addresses the following items: powerhead prohibitions in the North Carolina and South Atlantic EEZ; the possible expansion of deepwater coral Habitat Areas of Particular Concern (HAPC); the designation of HAPC for speckled hind and warsaw grouper; and the designation of Snapper Ledge within the Florida Keys National Marine Sanctuary as a Marine Protected Area (MPA). Additional considerations include: developing a recreational tagging program for deepwater grouper species; establishing a minimum size limit for hogfish; and changes in the bag and size limits for gray triggerfish. Shrimp Amendment 9 addresses the modification of the protocol for states to request concurrent closures of the EEZ during severe weather in order to expedite the closing process. This amendment also addresses the revision

of the Minimum Stock Size Threshold (MSST) proxy for pink shrimp.

Public Hearing and Scoping Meeting Schedule

1. January 24, 2012—Crowne Plaza Charleston Airport, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (843) 744–4422;

2. January 26, 2012—BridgePointe Hotel & Marina, 101 Howell Road, New Bern, NC 28562; telephone: (252) 636–3637;

3. January 30, 2012—Hilton Key Largo Resort, 97000 Overseas Highway, Key Largo, FL 33037; telephone: (305) 852–5553;

4. January 31, 2012—Doubletree Hotel Cocoa Beach Oceanfront, 2080 North Atlantic Avenue, Cocoa Beach, FL 32931; telephone: (321) 783–9222;

5. February 1, 2012—Crowne Plaza Jacksonville Riverfront, 1201 Riverplace Boulevard, Jacksonville, FL 32207; telephone: (904) 398–8800;

6. February 2, 2012—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; telephone: (912) 748–8888.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *SpLobAmend11PHComment@safmc.net* for Amendment 11 to the Spiny Lobster FMP; *GCrabAmend6PHComment@safmc.net* for Amendment 6 to the Golden Crab FMP; *SGAmend18BPHComment@safmc.net* for Amendment 18B to the Snapper Grouper FMP; *CEBA3ScopingComment@safmc.net* for Comprehensive Ecosystem-Based Amendment 3; and *ShrimpAmend9ScopingComment@safmc.net* for Amendment 9 to the Shrimp FMP. Written comments will be received from January 13, 2012 until 5 p.m. on February 15, 2012. Copies of the public hearing documents are available by contacting Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10. Copies will also be available online at *www.safmc.net* as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the start of each meeting.

Dated: January 5, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–235 Filed 1–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences; Quarterly Meeting Notice

AGENCY: Uniformed Services University of the Health Sciences (USU), Department of Defense.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES: Tuesday, February 7, 2012, from 8 a.m. to 1 p.m.

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone (301) 295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held October 25, 2011; acceptance of reports from working committees; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine and the Postgraduate Dental College; recommendations regarding awarding doctoral degrees in the Graduate School of Nursing; and recommendations regarding the awarding of master's and doctoral degrees in the biomedical sciences and public health. The President, USU, will present a report. Reports will also be presented by the Office of Accreditation and Organizational Assessment, the Office of Research and the Office of General Counsel. These actions and reports enable the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Janet S. Taylor at the address and phone number noted in **FOR FURTHER INFORMATION CONTACT.**

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed in **FOR FURTHER INFORMATION CONTACT.** If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the February 2012 meeting or at a future meeting.

Dated: January 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–219 Filed 1–9–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

The Historically Black College and University Capital Financing Advisory Board

AGENCY: U.S. Department of Education, The Historically Black College and University Capital Financing Advisory Board.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the date and proposed agenda of an upcoming

open meeting of the Historically Black College and University Capital Financing Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Friday, January 20, 2012. *Time:* 10 a.m.–2 p.m.

ADDRESSES: U.S. Department of Education, Board Room, 80 F Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Donald E. Watson, Executive Director, Historically Black College and University Capital Financing (HBCU Capital Financing) Advisory Board, 1990 K Street N.W., Room 6040, Washington, DC 20006; telephone: (202) 219–7037; fax: (202) 502–7852; email: *donald.watson@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–(800) 877–8339, Monday through Friday between the hours of 8 a.m. and 8 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: The Board is authorized by Title III, Part D, Section 347, of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066f). The Board is established within the Department of Education to provide advice and counsel to the Secretary and the Designated Bonding Authority as to the most effective and efficient means of implementing construction financing on Historically Black College and University campuses and to advise Congress regarding the progress made in implementing the program. The Board provides advice as to the capital needs of Historically Black Colleges and Universities (HBCUs), how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction-financing program.

The purpose of this meeting is to review current program activities, to make administrative and legislative recommendations to the Secretary and the U.S. Congress addressing the capital financing issues of HBCUs, and to discuss what additional steps might be taken to improve the operation of the HBCU Capital Financing Program.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistance listening devices, or materials in alternative format) should notify Donald Watson at (202) 219–7037, no later than January 13, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Friday, January 20, 2012, between 1:30 p.m.–2 p.m. Each speaker will be allowed to speak for up to three minutes. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Donald Watson, 1990 K Street NW., Room 6040, Washington, DC, by Friday, January 13, 2012.

Records are kept of all Board proceedings and are available for public inspection at the Office of the Historically Black College and University Capital Financing Advisory Board, 1990 K Street NW., Room 6040, Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Eastern Time, Monday through Friday.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–220 Filed 1–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies; Submission Dates for State Revenue and Expenditure Reports for Fiscal Year (FY) 2011, Revisions to Those Reports, and Revisions to Prior Fiscal Year Reports

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for FY 2011. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Census Bureau is the data collection agent for the National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2013 appropriated funds.

DATES: SEAs can begin submitting data on January 30, 2012. The deadline for the final submission of all data, including any revisions to previously submitted data for FY 2010 and FY 2011, is August 15, 2012. Any resubmissions of FY 2010 or FY 2011 data by SEAs in response to requests for clarification or reconciliation, or other inquiries, by NCES or the Census Bureau must be completed by Tuesday, September 4, 2012. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau prior to September 4, 2012.

Addresses and Submission Information: SEAs may mail ED Form 2447 to: U.S. Census Bureau, Attention: Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web (''Web'') using the interactive survey form at: *http://surveys.nces.ed.gov/ccdnpefs.* The Web form includes a digital confirmation page where a pin number can be entered. A successful entry of the pin number serves as a signature by the authorizing official. A certification form also can be printed from the Web site, and signed by the authorizing official and mailed to the Governments Division of the Census Bureau, at the address listed in the previous paragraph. This signed form must be mailed within five business days of Web form data submission.

Alternatively, SEAs may hand-deliver submissions by 4 p.m. (Eastern Time) to: Governments Division, U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD, 20746.

FOR FURTHER INFORMATION CONTACT: Mr. Jumaane Young, NPEFS Project Manager or an NPEFS team member (Census Bureau), Email: *Govs.npefs.list@census.gov.* Telephone: 1-(800) 437–4196 or (301) 763–3481. If

you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to: Stephen Q. Cornman, Project Director, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 502–7338.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines a State's ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, as defined in section 9101(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to using the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, the Title I, Part A of the ESEA; Impact Aid; and Indian Education programs. Other programs, such as the Education for Homeless Children and Youth program under Title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (Title II, Part A of the ESEA), make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I, Part A allocations.

By mid-January, the Census Bureau, acting as the data collection agent for NCES, will email to SEAs ED Form 2447 with instructions and a request that SEAs commence submitting FY 2011 data to the Census Bureau on January 30, 2012. SEAs are urged to submit accurate and complete data by March 15, 2012, to facilitate timely processing. Submissions by SEAs to the Census Bureau will be analyzed for accuracy and returned to each SEA for verification. All data, including any revisions to FY 2010 and FY 2011 data, must be submitted to the Census Bureau by an SEA not later than August 15, 2012. Any resubmissions of FY 2010 or FY 2011 data by SEAs in response to requests for clarification or reconciliation, or other inquiries, by NCES or the Census Bureau must be completed by Tuesday, September 4, 2012. Between August 15, 2012, and September 4, 2012, States may also, on their own initiative, resubmit data to resolve data issues not addressed in their final submission of NPEFS data by August 15, 2012. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau prior to September 4, 2012.

In order to facilitate timely submission of data, the Census Bureau will send reminder notices to SEAs in June and July of 2012.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, August 15, 2012, as the final date by which the NPEFS Web form or ED Form 2447 must be submitted. Any resubmissions of FY 2010 or FY 2011 data by SEAs in response to requests for clarification or reconciliation, or other inquiries, by NCES or the Census Bureau must be completed through the NPEFS Web form or ED Form 2447 by Tuesday, September 4, 2012. If an SEA submits revised data after the final deadline that result in a lower SPPE figure, its allocations may be adjusted downward or the Department may direct the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Note: The following are important dates in the data collection process for FY 2011:

January 30, 2012	SEAs can begin to submit accurate and complete data for FY 2010 and FY 2011.
March 15, 2012	SEAs are urged to have finished submitting accurate and complete data for FY 2010 and FY 2011.
August 15, 2012	Mandatory final submission date for FY 2010 and FY 2011 data.
September 4, 2012	Response by SEAs to response to requests for clarification, reconciliation or other inquiries by NCES or the Census Bureau. All data issues to be resolved.

If an SEA's submission is received by the Census Bureau after August 15, 2012, the SEA must show one of the following as proof that the submission was mailed on or before that date:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.

2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9543.

Dated: January 5, 2012.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2012–270 Filed 1–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–318–B]

Application To Export Electric Energy; AEP Energy Partners, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: AEP Energy Partners, Inc. (AEPEP) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before February 9, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov*, or by facsimile to (202) 586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at (202) 586–5260, or by email to *Christopher.Lawrence@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 22, 2007 the Department of Energy (DOE) issued Order No. EA–318, which authorized CSW Power Marketing to transmit electric energy from the United States to Mexico for a five-year term using existing international transmission facilities. CSW Power Marketing changed its name to AEPEP. On June 27, 2007, DOE rescinded Order No. EA–318 and issued Order No. EA–318–A to AEPEP under the same terms and conditions as the previous authorization. That authority will expire on February 22, 2012. On December 19, 2011, AEPEP filed an application with DOE for renewal of the export authority contained in Order No. EA–318–A for a ten-year term.

The electric energy that AEPEP proposes to export to Mexico will be purchased on the wholesale market in addition to purchase agreements AEPEP has entered into with the coal-fired Oklaunion Unit No. 1 near Vernon, Texas and various wind farms in the state of Texas. The power and energy to be purchased by AEPEP will be surplus to the needs of the selling entities.

The existing international transmission facilities to be utilized by AEPEP have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended. In addition to facilities determined by DOE to be appropriate for open access transmission by third parties, AEPEP was also authorized to export using small radial block-loaded facilities at Redford and Presidio, Texas.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the AEPEP application to export electric energy to Mexico should be clearly marked with OE Docket No. 318–B. An additional copy is to be filed directly with Jay E. Jadwin, Chief Counsel, American Electric Power Service Corporation, 155 W. Nationwide Blvd., Suite 500, Columbus, OH 43215 AND Carolyn Y. Thompson, Jones Day, 51 Louisiana Avenue NW., Washington, DC 20001–2113.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC on January 4, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–217 Filed 1–9–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–018; Case No. RF–019]

Decision and Order Granting a Waiver to Samsung From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case Nos. RF–018, RF–019) that grants to Samsung Electronics America, Inc. (Samsung) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for the basic models set forth in its petitions for waiver in Cases RF–018 and RF–019. Under today's decision and order, Samsung shall be required to test and rate these refrigerator-freezers using an alternate test procedure that takes their multiple defrost cycles into account when measuring energy consumption.

DATES: This Decision and Order is effective January 10, 2012.

FOR FURTHER INFORMATION CONTACT:

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Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with multiple

defrost cycles, provided that Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on January 3, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case Nos. RF–018, RF–019).

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Samsung's Petition for Waiver: Assertions and Determinations

On January 27 and July 19, 2011, Samsung submitted petitions for waiver and applications for interim waiver (petitions) from the test procedures applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung's petitions were applicable to specified basic models of refrigerator-freezers that incorporate multiple defrost cycles. In its petitions, Samsung requested a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that addresses defrost energy use and multiple defrost cycles in the same way as the new Appendix A test procedure DOE published in an interim final rule (75 FR 78810, Dec. 16, 2010) (codified at 10 CFR 430, Subpart B, Appendix A).

Whirlpool commented in response to Samsung's waiver petition that applying the second part of the interim final rule test to the fresh food defrost of one of these products results in an energy credit. Whirlpool's waiver comments discussed the data from testing performed by the Canadian Standards Association that examined the energy consumption of a Samsung model that uses multiple defrost cycles—Samsung model No. RFG297AAPN. Whirlpool asserted that the test results are illogical because the energy use contribution of the fresh food compartment defrost is negative (*i.e.* an energy credit), and added that the energy use contribution of the freezer compartment defrost is underestimated. (Docket EERE–2011–BT–WAV–0017, Whirlpool, No. 4 at p. 4) Whirlpool recommended that the test period for the second (defrost) part of the test for the fresh food defrost should end at the end of the second compressor ''on'' cycle after defrost, and that such a change to the test procedure for the fresh food defrost only would increase the measured energy use of the product by 1.6 percent.

After considering Whirlpool's comments suggesting that DOE modify the second part of the test, DOE reopened the comment period on the interim final rule and specifically requested comment on this topic. 76 FR 57613–57614 (Sept. 15, 2011). Whirlpool commented on the interim final rule and, consistent with its comments on the Samsung waiver, stressed that the end of the second part of the test be moved so that it coincides with the end of a compressor ''on'' cycle. Whirlpool asserted that this change should be made for all defrosts, whether they are for fresh food compartments or freezer compartments.

Whirlpool's interim final rule comments did not explain how the suggested test period would result in more accurate test results. Instead, the comments stated that the ''underlying principle when measuring the energy consumption of any product which operates in cycles is to measure from the same point in one cycle to the same point in a successor cycle,'' and asserted that the test procedure of Appendix A set forth in the interim final rule measures from a compressor stop to a compressor start for products with cycling compressors. Whirlpool did not, however, provide any explanation supporting the measurement from a point in one cycle to the same point in a successor cycle. The comments stated that the negative energy use contribution (*i.e.,* an energy credit) measured for the fresh food defrost of the Samsung product when using the Appendix A test period set forth in the interim final rule is not credible. As a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

result, DOE reexamined the test period contained in the interim final rule to help determine a means to account for the observation noted by Whirlpool.

More recently, DOE prepared an assessment demonstrating that a test period for the second part of the test both starting and ending at the end of a compressor ''on'' cycle is consistent with the full-cycle measurement specified for testing non-variable automatic defrost products. This document [2] shows mathematically that a calculation of energy use using the ''section 4.2'' [3] test period (''full test period'') matches the two-part calculation only when the second part of the test both starts and ends at the end of a compressor ''on'' cycle.

On the other hand, the compartment temperature is at its typical steady-state cycling maximum (the higher horizontal line of the temperature plot of figure 1 of 10 CFR 430, subpart B, appendix A) when test period T2 ends. Hence, while the compartment temperature has recovered to the range within which it varies during steady state operation, it has not recovered to the temperature state associated with the start of the test period—*i.e.* the temperature is warmer than at the start of the test period. In order to allow recovery to the start-of-test-period temperature, the test period would have to continue until the end of the compressor ''on'' cycle. This analysis illustrates that the test period prescribed by the interim final rule for the second part of the test is unlikely to fully account for the energy use associated with temperature recovery.

DOE concludes that the test period for the second part of the test specified in the interim final rule for products with cycling compressors and long-time or variable defrost may not accurately account for the energy use associated with defrost, which necessitates a change to enhance the accuracy of the measurement. DOE received no other comments on this topic during the comment periods for the test procedure interim final rule. In light of this new information, and its own review, DOE adopted the approach suggested by Whirlpool in its comments on the Samsung waiver and interim final rule to help ensure the procedure in Appendix A provides a greater level of accuracy. DOE also adopts this approach as the alternate test procedure in this Decision and Order.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Samsung petition for waiver. The FTC staff did not have any objections to granting a waiver to Samsung.

IV. Conclusion

After careful consideration of all the material that was submitted by Samsung and consultation with the FTC staff, it is ordered that:

(1) The petitions for waiver submitted by the Samsung Electronics America, Inc. (Case Nos. RF–018 and RF–019) are hereby granted as set forth in the paragraphs below.

(2) Samsung shall be required to test and rate the following Samsung models according to the alternate test procedure set forth in paragraph (3) below.

RS26*T***	RF266****	GFSF6KEX****
RSG257****	RF267****	GFSF6KKY****
RF428*****	RF268****	GFSL6KEX****
RFG293****	RF26X****	GFSL6KKY****
RFG295****	RB194****	GFSS6KEX****
RFG296****	RB195****	GFSS6KIX****
RFG297****	RB196****	GFSS6KKY****
RFG298****	RB197****	592 6570*
RFG299****	RB214****	592 6571*
RFG237****	RB215****	401.4100****
RFG238****	RB216****	401.40483800
RF4267****	RB217****	PFSF6PKX****
RFG267****	RF215****	PFSS6PKX****
RFG263****	RF217****	PFSS6SKX****
RSG309****	RF195****	PFSS9PKY****
RSG307****	RF197****	PFSS9SKY****
RF263****	DFSS9VKBSS	DFSS9VKBWW
RFG29P****	RFG29T****	DFSS9VKBBB
DFSF9VKBWW	DFSF9VKBBB	
DFSF9VKB****	GFSF6PKB****	GFSS6PKB****
GFSF6PKBBB	GFSS6PKBSS	GFSF6PKBWW
DFSS9VKB****		

(3) Samsung shall be required to test the products listed in paragraph (2) above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the Samsung products listed in paragraph (2) only, include:

1. In section 1, Definitions, the following definition:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost

[2] ''Refrigerator Test Procedure: Adjustments to Second Part of Test'', No. 47 in the refrigerator test procedure rulemaking docket, which can be found at *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2009-BT-TP-0003.*

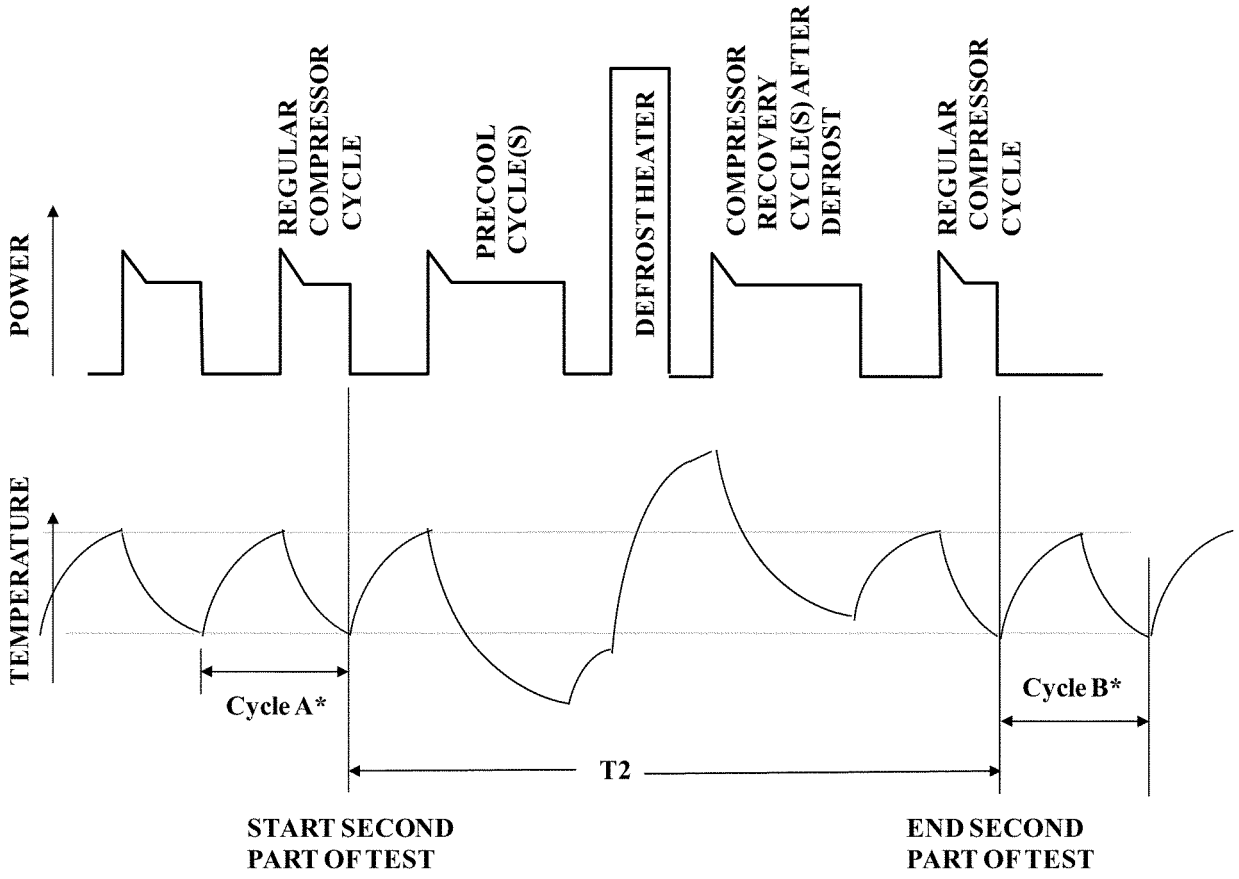
[3] See section 4.2 of Appendix A or of Appendix A1.

control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors



***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = \left(1440 \times EP1 / T1\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times T2_i / T1\right)\right) \times \left(12 / CT_i\right)\right]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

EP2i = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

T2i = length of time in minutes of the second part of the test for defrost cycle type i;

CTi is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

(CTLi × CTMi)/(F × (CTMī CTLi) + CTLi);

CTLi = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CTL for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CTMi = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CTLi but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CTM and/or CTL value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CTM and CTL values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT Li and CTMi in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

(4) Representations. Samsung may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Samsung's January 27 and July 19, 2011 petitions for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on January 3, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–216 Filed 1–9–12; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–55–000.

Applicants: ConocoPhillips Company.

Description: ConocoPhillips Company Application for Authorization for Disposition of Jurisdictional Facilities.

Filed Date: 12/29/11.

Accession Number: 20111229–5200.

Comments Due: 5 p.m. ET 1/19/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3080–007.

Applicants: Otter Tail Power Company.

Description: Updated Market Power Analysis of Otter Tail Power Company.

Filed Date: 12/30/11.

Accession Number: 20111230–5214.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–1257–001; ER10–1258–001.

Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.

Description: Wabash Valley Power Association, Inc., *et al.* submits Updated Market Power Analysis.

Filed Date: 12/30/11.

Accession Number: 20111230–5085.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–1338–001.

Applicants: Southern Indiana Gas and Electric Company.

Description: Vectren Corporation submits its triennial market power update for SIGECO's market-based rate authorization.

Filed Date: 12/29/11.

Accession Number: 20111230–0201.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–1484–002.

Applicants: Shell Energy North America (US), L.P.

Description: Updated Market Power Analysis of Shell Energy North America (US), L.P. for the Southeast Region.

Filed Date: 12/29/11.

Accession Number: 20111229–5202.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–1619–001; ER10–1620–002; ER10–1623–001; ER10–1625–002; ER12–60–001; ER10–1632–001.

Applicants: Tenaska Alabama II Partners, L.P., Tenaska Alabama Partners, L.P., Tenaska Georgia Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Power Services Co., Tenaska Power Management, LLC.

Description: Updated Market Power Analysis of Tenaska Alabama Partners, L.P., *et al.*

Filed Date: 12/30/11.

Accession Number: 20111230–5205.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–1790–005.

Applicants: BP Energy Company.

Description: BP Energy Company Submits Updated Market Power Analysis for Southeast Region.

Filed Date: 12/29/11.

Accession Number: 20111229–5193.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2265–001; ER10–2791–002; ER10–2792–002; ER10–1643–001; ER10–2876–002; ER10–2931–002.

Applicants: Cottonwood Energy Company LP, NRG Power Marketing LLC, Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC.

Description: Updated Market Power Analysis of NRG Power Marketing LLC, *et al.*

Filed Date: 12/30/11.

Accession Number: 20111230–5203.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–2331–002; ER10–2343–002; ER10–2319–001; ER10–2332–001; ER10–2326–002;

ER10–2327–003; ER10–2328–001; ER10–2330–002.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Rayle LLC, BE Alabama LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation.

Description: Updated Market Power Analysis and Order 697 Compliance Filing of J.P. Morgan Ventures Energy Corporation LLC.

Filed Date: 12/30/11.

Accession Number: 20111230–5216.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–2615–002; ER11–2335–003.

Applicants: Plum Point Energy Associates, LLC, Plum Point Services Company, LLC.

Description: Plum Point Energy Associates, LLC, *et. al.* Submit MBR Triennial.

Filed Date: 12/29/11.

Accession Number: 20111229–5198.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2791–001.

Applicants: Bayou Cove Peaking Power LLC.

Description: Request for Category 1 Seller status to be effective 2/28/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5110.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER10–2792–001.

Applicants: Big Cajun I Peaking Power LLC.

Description: Request for Category 1 Seller status to be effective 2/28/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5105.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER10–2876–001.

Applicants: Louisiana Generating LLC.

Description: Request for Category 1 Seller status to be effective 2/28/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5111.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER10–2931–001.

Applicants: NRG Sterlington Power LLC.

Description: Request for Category 1 Seller status to be effective 2/28/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5119.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER10–3057–001.

Applicants: Dow Pipeline Company.

Description: Triennial Market Power Analysis for the Southeast Region of Dow Pipeline Company.

Filed Date: 12/29/11.

Accession Number: 20111229–5195.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–3083–001; ER10–3082–001.

Applicants: Motiva Enterprises LLC, Shell Chemical LP.

Description: Triennial Market Power Update for the Southeast Region of Shell Chemical LP, *et al.*

Filed Date: 12/30/11.

Accession Number: 20111230–5217.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER10–3110–001; ER10–3144–001.

Applicants: Entegra Power Services LLC, Union Power Partners, L.P.

Description: Union Power Partners, L.P. and Entegra Power Services LLC submit an Updated Market Power Analysis for Market-Based Rate Authority.

Filed Date: 12/29/11.

Accession Number: 20111229–5196.

Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–3125–004; ER10–3102–004; ER10–3100–004; ER10–3143–002; ER10–3107–004; ER10–3109–004.

Applicants: Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC, Sabine Cogen, LP, AL Sandersville, LLC.

Description: Updated Market Power Analysis and Associated Work Papers for AL Sandersville, LLC, *et al.*

Filed Date: 12/30/11.

Accession Number: 20111230–5220.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER11–1858–001; ER10–3201–001.

Applicants: Montana Generation, LLC, NorthWestern Corporation.

Description: Updated Market Power Analysis of NorthWestern Corporation and Montana Generation, LLC.

Filed Date: 12/30/11.

Accession Number: 20111230–5209.

Comments Due: 5 p.m. ET 2/28/12.

Docket Numbers: ER12–57–002.

Applicants: Southwestern Electric Power Company.

Description: 20111202 ETEC Revised PSA to be effective 12/17/2010.

Filed Date: 12/2/11.

Accession Number: 20111202–5194.

Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–58–002.

Applicants: Southwestern Electric Power Company.

Description: 20111202 TexLa Restated PSA to be effective 12/17/2010.

Filed Date: 12/2/11.

Accession Number: 20111202–5193.

Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–91–001

Applicants: PJM Interconnection, L.L.C., Duke Energy Kentucky, Inc.

Description: Duke submits Amendment requesting Deferral of Action in ER12–91 and ER12–92 to be effective 1/1/2012.

Filed Date: 12/29/11.

Accession Number: 20111229–5158.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–92–001.

Applicants: PJM Interconnection, L.L.C., Duke Energy Kentucky, Inc.

Description: Duke submits Amendment requesting Deferral of Action in ER12–91 and ER12–92 to be effective 1/1/2012.

Filed Date: 12/29/11.

Accession Number: 20111229–5161.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–610–000.

Applicants: Shiloh III Lessee, LLC.

Description: Supplement to Application for MBR Authorization of Shiloh III Lessee, LLC.

Filed Date: 12/30/11.

Accession Number: 20111230–5118.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–714–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2011–12–29_NSP–MDEU_I&I_Cert of Concur_317–NSP to be effective 1/1/2012.

Filed Date: 12/29/11.

Accession Number: 20111229–5116.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–715–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–29–11 Schedule 39 to be effective 1/1/2012.

Filed Date: 12/29/11.

Accession Number: 20111229–5159.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–716–000.

Applicants: California Independent System Operator Corporation.

Description: 2011–12–29 CAISO's Amended MSSA with SVP to be effective 1/1/2012.

Filed Date: 12/29/11.

Accession Number: 20111229–5162.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–717–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 2011–12–29_EREPC_Str 21–23_O&M_Agmt-316 to be effective 12/1/2011.

Filed Date: 12/29/11.

Accession Number: 20111229–5171.

Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–718–000.

Applicants: New York Independent System Operator, Inc.

Description: NYISO/PJM Joint Compliance Filing of Market-to-Market Coordination Provisions to be effective 12/31/9998.

Filed Date: 12/30/11.

Accession Number: 20111230–5003.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–719–000.

Applicants: Portland General Electric Company.

Description: NTTG Funding Agreement to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5007.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–720–000.

Applicants: Idaho Power Company.

Description: NTTG Funding Agreement to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5008.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–721–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to TOA Att A adding City of Hamilton as PJM Transmission Owner to be effective 2/29/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5009.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–722–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to OATT Att L adding City of Hamilton as PJM Transmission Owner to be effective 2/29/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5010.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–723–000.

Applicants: PJM Interconnection, L.L.C., Duke Energy Ohio, Inc.

Description: Duke submits PJM Service Agreement Nos. 1491, 1958 and 3132–3141 to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5011.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–724–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Notice of Cancellation of Midwest Energy Rate Schedule and Service Agreement to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5041.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–725–000.

Applicants: New England Power Pool Participants Committee.

Description: Jan 2012 Membership Filing to be effective 12/1/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5047.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–726–000.

Applicants: Spring Valley Wind LLC.

Description: Application for Market-Based Rate Authority to be effective 2/28/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5050.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–727–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Ministerial Amendments to Formulary Rate Tariff FERC Electric Tariff Volume 1 to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5053.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–728–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Revisions to RS FERC No. 25 to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5056.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–729–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Blackstart Filing Part I of II—Revisions to Schedule 16 of the OATT to be effective 6/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5057.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–729–001.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Blackstart Filing Part II of II—Revisions to Schedule 16 of the OATT to be effective 1/1/2013.

Filed Date: 12/30/11.

Accession Number: 20111230–5059.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–730–000.

Applicants: Arizona Public Service Company.

Description: Addition to Rate Schedule No. 217, Addition of Exhibit B.PPK to be effective 3/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5065.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–731–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Service Agreement 2714 in Docket No. ER11–2745–000 to be effective 12/8/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5068.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–732–000.

Applicants: PacifiCorp.

Description: NTTG Funding Agreement to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5099.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–733–000.

Applicants: Promet Energy Partners, LLC.

Description: Market-Based Rate Tariff Baseline to be effective 12/30/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5101.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–734–000.

Applicants: NorthWestern Corporation.

Description: 3rd Revised Rate Sch FERC No. 253—NTTG Funding Agreement to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5104.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–735–000.

Applicants: NAEA Energy Massachusetts LLC.

Description: Tariff Revision Updating Seller Category Designation to be effective 12/30/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5114.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–736–000.

Applicants: NAEA Newington Energy, LLC.

Description: Update to Category Seller Designation to be effective 12/30/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5122.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–737–000.

Applicants: NAEA Ocean Peaking Power, LLC.

Description: Update to Category Seller Designation to be effective 12/30/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5127.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–738–000.

Applicants: NAEA Rock Springs, LLC.

Description: Update to Category Seller Designation to be effective 12/30/2011.

Filed Date: 12/30/11.

Accession Number: 20111230–5130.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–739–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–30–11 to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5132.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–740–000.

Applicants: California Independent System Operator Corporation.

Description: 2011–12–30 CAISO's MSSA with Riverside to be effective 1/1/2012.

Filed Date: 12/30/11.

Accession Number: 20111230–5135.

Comments Due: 5 p.m. ET 1/20/12.

Docket Numbers: ER12–741–000.

Applicants: Black Hills Power, Inc.

Description: Baseline Service Agreement to be effective 11/1/2011.
Filed Date: 12/30/11.
Accession Number: 20111230–5161.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–742–000.
Applicants: Lakewood Cogeneration Limited Partnership.
Description: Update to Category Seller Status to be effective 12/30/2011.
Filed Date: 12/30/11.
Accession Number: 20111230–5164.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–743–000.
Applicants: Black Hills Power, Inc.
Description: GDEMA Revised Schedule B to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5166.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–744–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Highlands PPA Filing to be effective 9/9/2010.
Filed Date: 12/30/11.
Accession Number: 20111230–5168.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–745–000.
Applicants: PJM Interconnection, L.L.C.
Description: Annual RTEP Update Filing to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5172.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–746–000.
Applicants: Dynegy Midwest Generation, LLC.
Description: Amended and Restated Black Start Service Agreement to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5174.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–747–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 12–30–11 Schedule 10–FERC to be effective 12/31/2011.
Filed Date: 12/30/11.
Accession Number: 20111230–5176.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–748–000.
Applicants: Black Hills Power, Inc.
Description: GDEMA Revised Schedule B to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5179.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–749–000.
Applicants: Midwest Independent Transmission System Operator, Inc. Ameren Transmission Company of Illinois.
Description: 12–30–11 to be effective 3/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5180.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–750–000.
Applicants: Black Hills Power, Inc.
Description: GDEMA Revised Schedule B to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5187.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–751–000.
Applicants: Black Hills Power, Inc.
Description: GDEMA Revised Schedule B to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5194.
Comments Due: 5 p.m. ET 1/20/12.
Docket Numbers: ER12–752–000.
Applicants: Southwest Power Pool, Inc.
Description: Notification of Tariff Implementation Errors and Request for Limited Tariff Waiver of Southwest Power Pool, Inc.
Filed Date: 12/30/11.
Accession Number: 20111230–5207.
Comments Due: 5 p.m. ET 1/20/12.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–4–000.
Applicants: ALLETE, Inc.
Description: Land Acquisition Report, ALLETE, Inc.
Filed Date: 12/30/11.
Accession Number: 20111230–5213.
Comments Due: 5 p.m. ET 1/20/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–221 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–276–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 2 to Tenaska 243 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5084.
Comments Due: 5 p.m. ET 1/17/12.
Docket Numbers: RP12–277–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero 3 to Tenaska 244 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5087.
Comments Due: 5 p.m. ET 1/17/12.
Docket Numbers: RP12–278–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: BG Energy 39431 Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5128.
Comments Due: 5 p.m. ET 1/17/12.
Docket Numbers: RP12–279–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37367 to Sequent 39472 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5129.
Comments Due: 5 p.m. ET 1/17/12.
Docket Numbers: RP12–280–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Sequent 39473 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.

Accession Number: 20120103–5130.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–281–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Spark Energy Gas 39466 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5131.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–282–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39468 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5132.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–283–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39471 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5133.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–284–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: JW 34689 to QWest 34962 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5134.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–285–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: JW 34690 to QWest 34963 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5135.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–286–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Questar 37657–12 Amendment to Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5136.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: RP12–287–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37733 to Texla 39467 Capacity Release Negotiated Rate Agreement Filing to be effective 1/1/2012.
Filed Date: 1/3/12.
Accession Number: 20120103–5137.
Comments Due: 5 p.m. ET 1/17/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–128–002.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.203: Docket RP12–128–000 Compliance Filing to be effective 12/2/2011.
Filed Date: 1/3/12.
Accession Number: 20120103–5205.
Comments Due: 5 p.m. ET 1/17/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 4, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–222 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–21–000]

Powerex Corp. v. *United States Department of Energy, Western Area Power Administration—Sierra Nevada Region*; Notice of Complaint

Take notice that on December 30, 2011, pursuant to sections 206, 211A, 306, 307, and 309 of the Federal Power Act (FPA), and 18 CFR 385.206 (2011), Powerex Corp. (Complainant) filed a complaint against United States Department of Energy, Western Area Power Administration—Sierra Nevada Region (Respondent). As further explained in its filed complaint, Complainant alleges that the Respondent has violated certain provisions of its filed reciprocity open access transmission tariff (OATT), business practices under the OATT, applicable Standards of Conduct, and the Commission's OASIS regulations (18 CFR 37.6(e)(1)) to provide transmission services that comport with the Commission's open access principles.

Complainant certifies that copies of the Complaint were served on the contacts for Respondent and MSCG listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2012.

Dated: January 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–196 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4632–033]

Commissioners of Public Works of the City of Spartanburg, SC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff has reviewed the application for surrender of license for the Clifton Mills No. 1 Project (FERC No. 4632) and has prepared an environmental assessment (EA). The project is located on the Pacolet River in Spartanburg County, South Carolina.

The EA contains the Commission staff's analysis of the potential environmental effects of the proposed surrender and concludes that authorizing the surrender, with appropriate environmental protective measures would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY contact (202) 502–8695.

Dated: January 03, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–195 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–5–000]

Notice of Filing; City of Anaheim, CA

Take notice that on December 14, 2011, City of Anaheim, California submitted its tariff filing per 35.28(e): 2012 TRBAA Update Filing, to be effective 1/1/2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2012.

Dated: December 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–199 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–6–000]

Notice of Filing; City of Azusa, CA

Take notice that on December 29, 2011, City of Azusa, California submitted its tariff filing per 35.28(e): 2012 TRBAA Update Filing, to be effective 1/1/2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2012.

Dated: December 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–200 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–4–000]

Notice of Filing; City of Pasadena, CA

Take notice that on December 14, 2011, City of Pasadena, California submitted its tariff filing per 35.28(e): 2012 TRBAA Update Filing, to be effective 1/1/2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 11, 2012.

Dated: December 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–198 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–726–000]

Spring Valley Wind LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Spring Valley Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–197 Filed 1–9–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0424; FRL 9510–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Water Quality Program Management Resource Analysis (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2011–0424, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kit Farber, Planning, Information, and Resource Management Staff, Office of Wastewater Management, Mail Code 4201M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone

number: (202) 564–0601; fax number: (202) 501–2346; email address: *farber.kit@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 27, 2011 (76 FR 44904), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2011–0424, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: State Water Quality Program Management Resource Analysis (New).

ICR Numbers: EPA ICR No. 2433.01, OMB Control No. 2040—NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA, in partnership with states, is conducting the State Water Quality Program Management Resource Analysis to enumerate current and future expenditures and resources for the administration and management of state water quality programs, and to quantify the resource needs for the administration and management of state water quality programs to implement the Clean Water Act (CWA). This effort builds on an expenditure and resource needs data collection effort conducted by EPA in collaboration with the states in 1998 and 2000.

EPA requires this information to comprehend resource expenditures and needs for the administration and management of the water quality programs under 33 U.S.C. 125 *et seq.* This effort, supported by EPA and the states, is necessary to develop strategies for better managing state water quality programs that implement the CWA, thus ensuring the long-term sustainability, efficiency, and effectiveness of these programs. This effort also helps states and EPA to effectively target resources to meet EPA's FY 2011–2015 strategic goals of protecting the nation's waters and enforcing environmental laws.

The data collection will facilitate creation of a detailed activity-based workload model to serve as a long-term budgeting, program management, and progress tracking tool for the states and EPA to use in the future. This is a one-time collection effort by the Office of Wastewater Management and responses to this ICR are voluntary.

This information will be collected by EPA and made available to the states and to the public in accordance with the requirements of the Freedom of Information Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 63 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State water quality agencies.

Estimated Number of Respondents: 20.

Frequency of Response: Once, Annually.

Estimated Total Annual Hour Burden: 1,252.

Estimated Total Annual Cost: $49,740, which includes annual labor costs only, since no capital or operation and maintenance costs are associated with this ICR.

Changes in the Estimates: This is a new collection, thus there is no currently approved ICR.

Dated: January 4, 2012.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–214 Filed 1–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9616–9]

Local Government's Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the Environmental Protection Agency's Local Government's Advisory Committee (LGAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The purpose of LGAC is to provide advice and recommendations to EPA's Administrator on ways to improve its partnership with local governments and provide more efficient and effective environmental protection.

It is determined that LGAC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Frances Eargle, Designated Federal Officer, LGAC, U.S. EPA (mail code 1301A), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or *eargle.frances@epa.gov.*

Dated: October 26, 2011.

Arvin Ganesan,

Associate Administrator, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2012–213 Filed 1–9–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 12, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not for profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 4,604 respondents and 8,040 responses.

Estimated Time per Response: 1–6.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 20,497 hours.

Total Annual Costs: $90,659,382.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (''First R&O'') in MB Docket No. 09–52, FCC 10–24. To enhance the ability of federally recognized Native American Tribes to provide vital radio services to their citizens on Tribal lands, in the First R&O the Commission established a Tribal Priority for use in its radio licensing procedures. On March 3, 2011, the Commission adopted a Second Report and Order (''Second R&O''), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09–52, FCC 11–28. On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09–52, FCC 11–190 (''Third R&O''). In the Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM context, specifically adopting a ''threshold qualifications'' approach to commercial FM application processing.

In the commercial FM context, the Tribal Priority is applied at the allotment stage of the licensing process. A Tribe or Tribal entity initiates the process by petitioning that a new Tribal Allotment be added to the FM Table of Allotments using the Tribal Priority. A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments, like all other FM allotment proponents, must file FCC Form 301 when submitting its Petition for Rule Making. Under the new ''threshold qualification'' procedures adopted in the Third R&O, once a Tribal Allotment has been successfully added to the FM Table of Allotments using the Tribal Priority through an FM allocations rulemaking, the Commission will announce by Public Notice a Threshold Qualifications Window (''TQ Window''). During the TQ Window, any Tribe or Tribal entity that could qualify to add that particular Tribal Allotment may file an FCC Form 301 application for that Tribal Allotment. Such an applicant must demonstrate that it meets all of the eligibility criteria for the Tribal Priority, just as the original Tribal Allotment proponent did at the allotment stage. If it wishes its previously filed Form 301 application to be considered at this stage, then during the TQ Window the original Tribal Allotment proponent must submit notice to process its pending Form 301 application immediately.

If only one acceptable application is filed during the TQ Window, whether by the original Tribal allotment proponent submitting notification to process its previously filed Form 301, or by another qualified applicant, that application will be promptly processed and the Tribal Allotment will not be auctioned. In the event that two or more acceptable applications are filed during the TQ Window, the Commission will announce a limited period in which the parties may negotiate a settlement or bona fide merger, as a way of resolving the mutual exclusivity between their applications. If a settlement or merger is reached, the parties must notify the Commission and the staff will process the surviving application pursuant to the settlement or merger. If a settlement cannot be reached among the mutually exclusive applicants, the Tribal Allotment will be auctioned during the next scheduled FM auction. At that time, only the applicants whose applications were accepted for filing during the TQ Window, as well as the original Tribal Allotment proponent, will be permitted to bid on that particular Tribal Allotment. This closed group of mutually exclusive TQ Window applicants must comply with applicable established auction procedures.

In the event that no qualifying party applies during the TQ Window, and the original Tribal allotment proponent

requests that its pending Form 301 application not be immediately processed, the Tribal Allotment will be placed in a queue to be auctioned in the normal course for vacant FM allotments. When the Tribal Allotment is offered at auction for the first time, only applicants meeting the ''threshold qualifications'' may specify that particular Tribal Allotment on FCC Form 175, Application to Participate in an FCC Auction (OMB Control No. 3060–0600). Should no qualifying party apply to bid or qualify to bid on a Tribal Allotment in the first auction in which it is offered, then the Tribal allotment will be offered in a subsequent auction and any applicant, whether or not a Tribal entity, may apply for the Tribal Allotment.

Consistent with actions taken by the Commission in the Third R&O, Form 301 has been revised to accommodate applicants applying in a TQ Window for a Tribal Allotment. As noted above, an applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add the particular Tribal Allotment for which it is applying. Form 301 contains a new question in Section II—Legal titled ''Tribal Priority—Threshold Qualifications.'' An applicant answering ''yes'' to the question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

In addition, Form 301 contains a new option underSection I—General Information—Application Purpose, titled ''New Station with Petition for Rulemaking to Amend FM Table of Allotments using Tribal Priority.'' A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rule Making. This new Application Purpose field will assist the staff in quickly identifying Form 301 applications filed in connection with a petition to add a Tribal Allotment and initiating the ''threshold qualification'' procedures.

This information collection is being revised to accommodate applicants applying in a Threshold Qualifications Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the new ''threshold qualifications'' procedures adopted in the Third R&O.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–233 Filed 1–9–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one new Privacy Act system(s) of records.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended (Privacy Act), 5 U.S.C. 552a, the FCC proposes to add one new system of records, FCC/PSHSB–2, ''PSHSB Contact Database.'' The FCC's Public Safety and Homeland Security Bureau (PSHSB or Bureau) will use the information contained in FCC/PSHSB–2, ''PSHSB Contact Database,'' to store the personally identifiable information (PII) that individuals may submit voluntarily via one or more of the PSHSB's customer comment formats:

PSHSB's (electronic) Web page Comment Card (Contact Us) at: *http://www.fcc.gov/pshs/contactus.html* for those who wish to submit comments to PSHSB;

PSHSB's (electronic) Summit Comment Card (Feedback): *http://volta.fcc.gov:9090/pshs/summits* and *http://www.fcc.gov/pshs/event-registration2.html* for those who participate in PSHSB's public events, such as summits, conferences, forums, expos, lectures, etc., and wish to submit comments;

PSHSB's (electronic) Event Registration Form (Event Registration): *http://www.fcc.gov/pshs/event-registration.html* and *http://www.fcc.gov/pshs/event-registration2.html* for those who wish to register for PSHSB events online;

PSHSB's (electronic) Photo Safety Contest: *http://www.fcc.gov/pshs/photo-project-and-contest.html* for those who wish to submit a photo entry for PSHSB's monthly contest;

PSHSB's (electronic) Network Outage Reporting System (NORS): *http://www.fcc/gov/pshs/services/cip/nors/nors.html* for those who submit questions to PSHSB regarding NORS content; and/or PSHSB's (paper) business card collections, whose information is transferred into the PSHSB's (electronic) Contact Database, and the business card is then destroyed.

These formats provide a means by which PSHSB receives feed-back as part of PSHSB's public relations and outreach activities.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the new system of records on or before February 9, 2012. The Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before February 21, 2012. The proposed new system of records shall become effective on February 21, 2012 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records to be maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be obtained or viewed pursuant to the contact and location information given above in the **ADDRESSES** section. The purpose for adding this new system of records, FCC/PSHSB–2, ''PSHSB Contact Database,'' is to store the personally identifiable information (PII) that individuals may submit voluntarily via one or more of these customer comment formats:

PSHSB's (electronic) Web page Comment Card (Contact Us) at: *http://volta.fcc.gov:9090/pshs/contactus.html* for those who wish to submit comments to PSHSB;

PSHSB's (electronic) Summit Comment Card (Feedback): *http://www.fcc.gov/pshs/summits/* and *http://www.fcc.gov/pshs/event-registration2.html* for those who participate in PSHSB's public events, such as summits, conferences, forums, expos, lectures, etc., and wish to submit comments;

PSHSB's (electronic) Event Registration Form (Event Registration): *http://www.fcc.gov/pshs/event-registration.html* and *http://www.fcc.gov/pshs/event-registration2.html* for those who wish to register for PSHSB events online;

PSHSB's (electronic) Photo Safety Contest: *http://www.fcc.gov/pshs/photo-project-and-contest.html* for those who wish to submit a photo entry for PSHSB's monthly contest;

PSHSB's (electronic) Network Outage Reporting System (NORS): *http://www.fcc/gov/pshs/services/cip/nors/nors.html* for those who submit questions to PSHSB regarding NORS content; and/or

PSHSB's (paper) business card collections, whose information is transferred into PSHSB's (electronic) Contact Database, and the business card is then destroyed.

These formats provide a means by which PSHSB receives feed-back as part of PSHSB's public relations and outreach activities.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/PSHSB–2

SYSTEM NAME:

PSHSB Contact Database.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Public Service and Homeland Security Bureau (PSHSB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from the public-at-large and the public safety community.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this information system include the contact information in the PSHSB Contact Database that individuals have provided with their comments or messages, which includes one or more of the following, depending upon PSHSB requirements:

1. Personal contact information, including but not limited to, individual's name, personal cell phone number(s), home telephone number(s), business telephone number(s), personal and professional email address(es), personal and professional fax number(s), IP address, business and home mailing address, etc.; and

2. Job-related data, including but not limited to:

(a) Type(s) of organization(s): Title, academia, association/institution, authorities, college/university, boards, commissions, councils, legislative, military, non-for-profit organization(s), private sector, business(es), research and development (R&D), training facilities; and

(b) Government(s): City, county, federal, foreign, state, tribal; and organization affiliation, *i.e.,* such as 9–1–1 Services, Public Safety Answering Points (PSAPs), Emergency Alert System (EAS), first responders, health care sector, persons with disabilities, and spectrum. *e.g.,* spectrum authorizations, spectrum management, spectrum enforcement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 151, 152, 155, 257, 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 155.

PURPOSE(S):

The FCC's PSHSB Contact Database information system stores the personally identifiable information (PII) that individuals may submit voluntarily via one or more of these customer comment formats:

(a) PSHSB's (electronic) Web page Comment Card (Contact Us) at: *http://www.fcc.gov/pshs/contactus.html* for those who wish to submit comments to PSHSB;

(b) PSHSB's (electronic) Summit Comment Card (Feedback): *http://volta.fcc.gov:9090/pshs/summits/* and *http://www.fcc.gov/pshs/event-registration2.html* for those who participate in PSHSB's public events, such as summits, conferences, forums, expos, lectures, etc., and wish to submit comments;

(c) PSHSB's (electronic) Event Registration Form (Event Registration): *http://www.fcc.gov/pshs/event-registration.html* for those who wish to register for PSHSB events online;

(d) PSHSB's (electronic) Photo Safety Contest: *http://www.fcc.gov/pshs/photo-project-and-contest.html* for those who wish to submit a photo entry for PSHSB's monthly contest;

(e) PSHSB's (electronic) Network Outage Reporting System (NORS): *http://www.fcc/gov/pshs/services/cip/nors/nors.html* for those who submit questions to PSHSB regarding NORS content; and/or

(f) PSHSB's (paper) business card collections, whose information is transferred into PSHSB's (electronic) Contact Database, and the business card is then destroyed.

These formats provide a means by which PSHSB receives feed-back as part of PSHSB's public relations and outreach activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Congressional Inquiries—When requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for the individual's own records;

2. Government-wide Program Management and Oversight—When requested by the National Archives and Records Administration (NARA), the General Services Administration (GSA), and/or the Government Accountability Office (GAO) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

3. Program Partners (public safety community)—A record from this system may be used as part of the PSHSB's statistical reporting and/or summaries of the comments that the Bureau provides to first responders such as the Red Cross, Association of Public Communications Officials (APCO), National Emergency Number Association (NENA), Department of Homeland Security (DHS), and other federal partners, law enforcement agencies, and medical organizations,

etc., which have participated in PSHSB summit conferences, and who may have expressed interest in such reports and/or comment summaries.

4. Adjudication and Litigation—Where after careful review, the Agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Agency or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

5. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate federal, state, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency; and

6. Breach Notification—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

7. Public Access—Information pertaining to these PSHSB outreach activities is available for public inspection via the Internet at *http://www.fcc.gov/psheb/*. PSHSB may redact any personally identifiable information (PII) or other sensitive information at the request of the individual whose information is being posted.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

The information in this system includes electronic comment records, files, and data that are maintained in the FCC's computer network databases; and paper business cards are immediately destroyed after the information is transferred into the PSHSB's (electronic) Contact Database.

RETRIEVABILITY:

The information in the paper business cards is immediately transferred to the PSHSB (electronic) Contact Database, and any information can then be retrieved by the individual's personal contact information, and the individual's job-related data.

Information in the PSHSB Contact Database information system's electronic databases can be retrieved by the individual's personal contact information, and the individual's job-related data.

SAFEGUARDS:

The information on paper business cards, which are collected by PSHSB personnel, is immediately transferred to the PSHSB (electronic) Contact Database and the paper cards are then destroyed soon after.

The electronic records, data, and files are maintained in the FCC computer network databases. Access to the information in the electronic files is restricted to authorized PSHSB supervisors and staff. Authorized staff and contractors in the FCC's Information Technology Center (ITC), who maintain these computer databases, also have access to the electronic files. Other FCC employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

The information on the paper business cards, which are collected by PSHSB personnel, is immediately transferred to the PSHSB (electronic) Contact Database, and the paper cards are then destroyed soon after.

All information that is collected via the electronic Web sites and/or transferred (from paper business cards) to these PSHSB electronic databases will be kept by the FCC until a records schedule has been approved by the National Archives and Records Administration (NARA).

SYSTEMS MANAGER(S) AND ADDRESS:

Public Safety and Homeland Security (PSHSB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Public Service and Homeland Security Bureau (PSHSB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Public Service and Homeland Security Bureau (PSHSB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Public Service and Homeland Security Bureau (PSHSB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

Information in the Contact Database system is provided by individuals (general public and public safety community) who submit their comments and messages to PSHSB via PSHSB's (electronic) Web page Comment Card (Contact Us); PSHSB's (electronic) Summit Comment Card (Feedback); PSHSB's (electronic) Event Registration Form (Event Registration); PSHSB (electronic) Photo Safety Contest; PSHSB (electronic) Network Outage Reporting System (NORS); and PSHSB's (paper) business card collections; which provide the means by which PSHSB receives input and feedback as part of the Bureau's customer relations activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–154 Filed 1–9–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Systemic Resolution Advisory Committee; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of the FDIC Systemic Resolution Advisory Committee (the ''SR Advisory Committee''), which will be held in Washington, DC The SR Advisory Committee will provide advice and recommendations on a broad range of issues regarding the resolution of systemically important financial companies pursuant to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (July 21, 2010), 12 U.S.C. 5301 *et seq.* (the ''Dodd-Frank Act'').

DATES: Wednesday, January 25, 2012, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of a range of issues related to the resolution of systemically important financial companies pursuant to Title II of the Dodd-Frank Act. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available, on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the SR Advisory Committee before or after the meeting. This SR Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_SRAC.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at: *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The SR Advisory Committee meeting videos are made available on-demand approximately two weeks after the event.

Dated: January 5, 2012.

Robert Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2012–189 Filed 1–9–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 2012.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *George Michael Schweitzer, Miami, Florida,* to acquire up to 1.26 percent of the outstanding shares of Biscayne Bancshares, Inc. and its subsidiary bank, Biscayne Bank, both of Coconut Grove, Florida. Total pro forma ownership will equal 12.85 percent.

Board of Governors of the Federal Reserve System, January 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–210 Filed 1–9–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 6, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Perham State Bancshares, Inc., Perham, Minnesota,* to acquire 100 percent of Farmers State Bank of Dent, Dent, Minnesota.

Board of Governors of the Federal Reserve System, January 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–209 Filed 1–9–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0080]

Sigma Corporation; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Sigma, File No. 101 0080'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/sigmaconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christopher Renner (202) 326–3173), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 4, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 6, 2012. Write ''Sigma, File No. 101 0080'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/sigmaconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Sigma, File No. 101 0080'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 6, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order (''Agreement'') from Sigma Corporation (''Sigma''). The Agreement seeks to resolve charges that Sigma violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by engaging in a variety of collusive and exclusionary acts and practices in the market for ductile iron pipe fittings (''DIPF'').

The Commission anticipates that the competitive issues described in the complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Agreement. The Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and any comments received, and will decide whether it should withdraw from the Agreement or make final the proposed order contained in the Agreement.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed order. It is not intended to constitute an official interpretation of the Agreement and proposed order or in any way to modify its terms.

The proposed order is for settlement purposes only and does not constitute an admission by Sigma that it violated the law or that the facts alleged in the complaint, other than jurisdictional facts, are true.

I. The Complaint

The following allegations are taken from the complaint and publicly available information.

A. Background

DIPF are used in municipal water distribution systems to change pipe diameter or pipeline direction. DIPF suppliers distribute these products through wholesale distributors, known as waterworks distributors, which specialize in distributing products for water infrastructure projects. The end users of DIPF are typically municipal and regional water authorities.

Both imported and domestically produced DIPF are commercially available. Sigma and its largest competitors in the DIPF market, McWane, Inc. (''McWane'') and Star Pipe Products Ltd. (''Star''), all sell imported DIPF. McWane was the only domestic producer of a full line of small and medium-sized DIPF until Star's entry into domestic production in 2009.

There are no widely available substitutes for DIPF. Some projects require that only domestically produced DIPF be used. Domestically produced DIPF sold for use in these projects typically command higher prices than comparable imported DIPF.

DIPF prices are based off of published list prices and discounts, with customers negotiating additional discounts off of those list prices and discounts on a transaction-by-transaction basis. DIPF suppliers also offer volume rebates.

B. Challenged Conduct

Between January 2008 and January 2009, Sigma allegedly conspired with McWane and Star to increase the prices at which imported DIPF were sold in the United States. In furtherance of the conspiracy, and at the request of McWane, Sigma changed its business methods to make it easier to coordinate price levels, first by limiting the discretion of regional sales personnel to offer price discounts, and later by exchanging information documenting the volume of its monthly sales, along with McWane and Star, through an entity known as the Ductile Iron Fittings Research Association (''DIFRA'').

After the collapse of the DIFRA information exchange in early 2009, Sigma attempted to revive the conspiracy by convincing McWane and Star to raise their prices and to resume the exchange of sales data through DIFRA. McWane and Star rejected Sigma's invitation to collude.

The collapse of DIFRA coincided with the enactment of The American Recovery and Reinvestment Act of 2009 (''ARRA'') in February 2009. In the ARRA, the United States Congress allocated more than $6 billion to water infrastructure projects, but included a provision requiring the use of domestically produced materials in those projects (the ''Buy American'' requirement). At the time the ARRA was passed, McWane was the sole supplier of a full line of domestic DIPF in the most commonly used size ranges, and possessed monopoly power in that market.

In response to the passage of the ARRA and its Buy American provision, Sigma, Star and others attempted to enter the domestically produced DIPF market in competition with McWane. Rather than compete with one another in the domestic DIPF market, Sigma and McWane executed a Master Distributor Agreement (''MDA''), whereby Sigma was appointed as a distributor of McWane's domestically produced DIPF. Through the MDA, Sigma accepted compensation from McWane in exchange for abandoning its planned entry into the domestic DIPF market. Sigma also agreed to adopt exclusive dealing policies similar to those adopted by McWane, in furtherance of a conspiracy with McWane to exclude Star and to monopolize the domestic DIPF market.

The complaint alleges that Sigma had no legitimate business justification for this course of conduct, and that Sigma's collusive and exclusionary conduct has caused higher prices for both imported and domestically produced DIPF.

II. Legal Analysis

We analyze first the various agreements allegedly reached by Sigma with its competitors to limit competition relating to imported DIPF, and then address Sigma's participation, along with McWane, in the alleged monopolization of the domestic DIPF market.

A. Sigma's Involvement in the 2008 Price Fixing Conspiracy

The January and June 2008 price restraints among Sigma, McWane and Star alleged in the complaint are the sort of naked restraints on competition that are *per se* unlawful.[2] The June 2008 agreement, which was allegedly reached after a public invitation to collude by McWane, illustrates how price fixing agreements may be reached in public. Here, McWane's invitation to collude was conveyed in a letter sent to waterworks distributors, the common customers of McWane, Sigma and Star. McWane's letter contained a section that was meaningless to waterworks distributors, but was intended to inform Sigma and Star of the terms on which McWane desired to fix prices.[3]

The DIFRA information exchange was also illegal. The complaint alleges that the DIFRA information exchange played a critical role in the 2008 price fixing conspiracy, first as the *quid pro quo* for a price increase by McWane in June 2008, and then by enabling Sigma, McWane and Star to monitor each others' adherence to the collusive arrangement through the second half of 2008.[4]

B. Sigma's 2009 Invitation To Collude

The complaint includes allegations of a stand-alone Section 5 violation, namely that Sigma invited McWane and Star to collude with Sigma to increase

[2] *Federal Trade Commission & United States Department of Justice, Antitrust Guidelines for Collaboration Among Competitors* (''Competitor Collaboration Guidelines'') § 1.2 (2000); *In re North Texas Specialty Physicians,* 140 F.T.C. 715, 729 (2005) (''We do not believe that the *per se* condemnation of naked restraints has been affected by anything said either in *California Dental* or *Polygram*'').

[3] Because McWane's communication informed its rivals of the terms of price coordination desired by McWane without containing any information for customers, this communication had no legitimate business justification. *See In re Petroleum Products Antitrust Litig.,* 906 F.2d 432, 448 (9th Cir. 1990) (public communications may form the basis of an agreement on price levels when ''the public dissemination of such information served little purpose other than to facilitate interdependent or collusive price coordination'').

[4] The Commission articulated a safe harbor for exchanges of price and cost information in Statement 6 of the 1996 Health Care Guidelines. *See Dep't of Justice & Federal Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care, Statement 6: Enforcement Policy on Provider Participation in Exchanges of Price and Cost Information* (1996). The DIFRA information exchange failed to qualify for the safety zone of the Health Care Guidelines for several reasons. Although the DIFRA information exchange was managed by a third party, the information exchanged was insufficiently historical, the participants in the exchange too few, and their individual market shares too large to qualify for the permissive treatment contemplated by the Health Care Guidelines. While failing to qualify for the safety zone of the Health Care Guidelines is not in itself a violation of Section 5, firms that wish to minimize the risk of antitrust scrutiny should consider structuring their collaborations in accordance with the criteria of the safety zone.

DIPF prices in early 2009.[5] The term ''invitation to collude'' describes an improper communication from a firm to an actual or potential competitor that the firm is ready and willing to coordinate on price or output. Such invitations to collude impose a significant risk of anticompetitive harm to consumers, and as such, violate Section 5 of the FTC Act absent a legitimate business justification.

C. Sigma's Involvement in a 2009 Conspiracy With McWane To Eliminate Competition in the Domestic DIPF Market

The complaint alleges that, after the passage of the ARRA, Sigma prepared to enter the domestic DIPF market in competition with McWane. However, McWane wanted to avoid this competition, so McWane and Sigma agreed that Sigma would participate in the domestic DIPF market only as a distributor of McWane's product. Through this arrangement, McWane shared a portion of its monopoly profits in the domestic DIPF market with Sigma in exchange for Sigma's commitment to abandon its plans to enter that market in competition with McWane. Such agreements are presumptively unlawful.[6]

D. McWane and Sigma Conspired To Monopolize the Domestic DIPF Market

The elements of a conspiracy to monopolize are: (1) The existence of a combination or conspiracy; (2) an overt act in furtherance of the conspiracy; and (3) a specific intent to monopolize.[7] Here, the complaint alleges that through their MDA arrangement, McWane and Sigma agreed to limit competition between themselves in the domestic DIPF market, and to exclude their rivals in that market, including Star, by the adoption of duplicate exclusive dealing policies, and did so with the common and specific intent to maintain and share monopoly profits in the domestic DIPF market.

III. The Proposed Order

The proposed order is designed to remedy the unlawful conduct charged against Sigma in the complaint and to prevent the recurrence of such conduct.

Paragraph II.A of the proposed order prohibits Sigma from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which DIPF are sold in the United States, or to allocate or divide markets, customers, or business opportunities.

Paragraph II.B of the proposed order prohibits Sigma from soliciting or inviting any competitor to participate in any of the actions prohibited in Paragraphs II.A.

Paragraph II.C of the proposed order prohibits Sigma from participating in or facilitating any agreement between competitors to exchange ''Competitively Sensitive Information'' (''CSI''), defined as certain types of information related to the cost, price, output or customers of or for DIPF. Paragraph II.D of the proposed order prohibits Sigma from unilaterally disclosing CSI to a competitor, except as part of the negotiation of a joint venture, license or acquisition, or in certain other specified circumstances. Paragraph II.E of the proposed order prohibits Sigma from attempting to engage in any of the activities prohibited by Paragraphs II.A, II.B, II.C, or II.D.

The prohibitions on Sigma's communication of CSI with competitors contained in Paragraphs II.C and II.D of the proposed order are subject to a proviso that permits Sigma to communicate CSI to its competitors under certain circumstances. Under the proposed order, Sigma may participate in an information exchange with its competitors in the DIPF market provided that the information exchange is structured in such a way as to minimize the risk that it will facilitate collusion among the Sigma and its competitors. Specifically, the proposed order requires any exchange of CSI to occur no more than twice yearly, and to involve the exchange of aggregated information more than six months old. In addition, the aggregated information that is exchanged must be made publicly available, which increases the likelihood that an information exchange involving Sigma will simultaneously benefit consumers. The proposed order also prohibits Sigma's participation in an exchange of CSI involving price, cost or total unit cost of or for DIPF when the individual or collective market shares of the competitors seeking to participate in an information exchange exceed specified thresholds. The rationale for this provision is that in a highly concentrated market the risk that the information exchange may facilitate collusion is high. Due to the highly concentrated state of the DIPF market as currently structured, an information exchange involving Sigma and relating to price, output or total unit cost of or for DIPF is unlikely to reoccur in the foreseeable future.

The proposed order has a term of 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner J. Thomas Rosch, Concurring in Part and Dissenting in Part

The Commission has voted separately (1) to issue a Part 3 Administrative Complaint against Respondents McWane, Inc. (''McWane'') and Star Pipe Products, Ltd. (''Star''), and (2) to accept for public comment a Consent Agreement settling similar allegations in a draft Part 2 Complaint against Respondent Sigma Corporation (''Sigma''). While I have voted in favor of both actions, I respectfully object to the inclusion—in both the Part 3 Administrative Complaint and in the draft Part 2 Complaint—of claims against McWane and Sigma, to the extent that such claims are based on allegations of exclusive dealing, as explained in Part I below. I also respectfully object to naming Star, a competitor of McWane and Sigma, as a Respondent in the Part 3 Administrative Complaint, which alleges, *inter alia,* that Star engaged in a horizontal conspiracy to fix the prices of ductile iron pipe fittings (DIPFs) sold in the United States, and in a related, information exchange, as described in Part II below.

I.

For reasons similar to those that I articulated in a recent dissent in another matter, *Pool Corp.,* FTC File No. 101–0115, *http://www.ftc.gov/os/caselist/1010115/111121poolcorpstatementrosch.pdf,* I do not think that the Part 3 Administrative Complaint against McWane and the draft Part 2 Complaint against Sigma adequately allege exclusive dealing as a matter of law. In particular, there is case law in both the Eighth and Ninth Circuits blessing the conduct that the complaints charge as exclusive dealing.

[5] *In re U-Haul International, Inc.,* F.T.C. File No. 081–0157, 2010 FTC LEXIS 61, *6 (July 14, 2010); *In re Valassis Communications, Inc.,* F.T.C. File No. 051–008, 2006 FTC LEXIS 25, *4–7 (April 19, 2006); *In re MacDermid, Inc.,* F.T.C. File No. 991–0167, 1999 FTC LEXIS 191, *10 (Feb. 4, 2000); *In re Stone Container Corp.,* 125 F.T.C. 853 (1998); *In re Precision Moulding Co.,* 122 F.T.C. 104 (1996); *In re YKK (USA) Inc.,* 116 F.T.C. 628 (1993); *In re A.E. Clevite, Inc.,* 116 F.T.C. 389 (1993); *In re Quality Trailer Products Corp.,* 115 F.T.C. 944 (1992). In addition, an invitation to collude may violate Section 2 of the Sherman Act as an act of attempted monopolization, and may also violate federal wire and mail fraud statutes. *See United States* v. *American Airlines,* 743 F.2d 1114 (5th Cir. 1984); *United States* v. *Ames Sintering Co.,* 927 F.2d 232 (6th Cir. 1990).

[6] *E.g., Palmer* v. *BRG of Georgia, Inc.,* 498 U.S. 46, 49–50 (1990); *United States* v. *Masonite Corp.,* 316 U.S. 265, 281 (1942); *In re SKF Industries, Inc.,* 94 F.T.C. 6, 97–104 (1979).

[7] *See Volvo N. Am. Corp.* v. *Men's Int'l Prof'l Tennis Council,* 857 F.2d 55, 74 (2d Cir. 1988).

II.

I also object to the allegations in the Part 3 Administrative Complaint and in the draft Part 2 Complaint that name Star as a co-conspirator in the alleged horizontal price-fixing of DIPF sold in the United States and the related, alleged DIFRA information exchange.[8] I do not consider naming Star, along with McWane and Sigma, as a co-conspirator to be in the public interest. There are at least three reasons why this is so. First, although there may be reason to believe Star conspired with McWane and Sigma in this oligopolistic industry, Star seems much less culpable than the others. More specifically, I believe that we must be mindful of the consequences of public law enforcement in assessing whether the public interest favors joining Star as a co-conspirator.[9] Second, I am concerned that a trier of fact may find it hard to believe that Star could be both a victim of McWane's alleged ''threats'' to deal exclusively with distributors, and at more or less the same time (the ''exclusive dealing'' program began in September 2009), a co-conspirator with McWane in a price-fixing conspiracy (June 2008 to February 2009). (This concern further explains why I do not have reason to believe that the exclusive dealing theory is a viable one.) Third, I am concerned that Star's alleged participation in the price-fixing conspiracy and information exchange relies, in part, on treating communications to distributors as actionable signaling on prices or price levels.[10] *See, e.g., Williamson Oil Co., Inc.* v. *Philip Morris USA,* 346 F.3d 1287, 1305–07 (11thCir. 2003).

[FR Doc. 2012–267 Filed 1–9–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the second 3-year cycle of case record reviews to meet the requirements for reporting under IPIA. The OCC has conducted ongoing evaluation of the case record review process to determine if ''improper authorizations for payment'' remained a suitable proxy for actual ''improper payments.'' It is OCC's determination that in some cases authorizations for payment represented the same figure as actual payments; in other cases authorizations for payment has represented a figure as much as 20% higher than actual payments. Many States reported errors found during the desk audit review process that were due to missing or insufficient documentation or other misapplication of policy, but found that families were determined to be eligible for services and that the actual payment authorized was correct. Other States reported regulatory barriers in State law which prohibits recovery of over-authorization or over-payment as the result of agency error. As such, this information collection will provide a methodology revision that will assess errors in eligibility determinations that will compare the amount authorized for payment with the actual payment.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248

Estimated Total Annual Burden Hours: 43,613.36.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

[8] *See* McWane/Star Part 3 Administrative Compl. §§ 29–38, 64–65; Sigma draft Part 2 Compl. §§ 23B33.

[9] *See Credit Suisse Secs. (USA) LLC* v. *Billing,* 551 U.S. 264, 281–84 (2007) (questioning the social benefits of private antitrust lawsuits filed in numerous courts when the enforcement-related need is relatively small); *Bell Atl. Corp.* v. *Twombly,* 550 U.S. 544, 557–60 (2007) (expressing concern with the burdens and costs of antitrust discovery, and the attendant *in terrorem* effect, associated with private antitrust lawsuits).

[10] McWane/Star Part 3 Administrative Compl. § 34b; Sigma draft Part 2 Compl. § 29.

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–215 Filed 1–9–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HIV Clinician Workforce Study (OMB No. 0915–NEW)

HRSA's HIV/AIDS Bureau (HAB) is planning to conduct a 24-month HIV clinician workforce study to provide HRSA and other state and federal agencies with national and state-level estimates of the number of primary care clinicians currently providing medical care to people living with HIV or AIDS in the United States, as well as projections of the magnitude of the expected shortage or surplus of HIV related primary care clinicians through 2015. The study will focus on the supply and demand of health professionals who independently manage patients with HIV/AIDS. *The study will have two main components:*

a. Design and implementation of a forecasting model to estimate and project the supply of and demand for HIV clinicians at the national and regional levels; and

b. Implementation of two surveys to collect the information needed to develop HIV-specific input parameters for the forecasting model, as well as to help address other research questions of the study.

HRSA is requesting OMB approval to conduct a HIV clinician survey and a HIV practice survey. The HIV clinician survey will focus on the individual provider of care and will include questions related to:

a. The clinician's age, gender, medical profession, and medical specialty;

b. The number of hours spent in direct patient care;

c. The size and characteristics of HIV patient load;

d. The primary practice characteristics and patient management strategies; and

e. The plans to increase or decrease number of hours spent in direct patient care, as well as plans for retirement.

The HIV practice survey will also focus on the practice site and will include questions related to type and size of clinic, clinic specialty and affiliation, number and acuity of patients, number and composition of staff, type of staffing model and patient management strategies, meaningful use of electronic medical record systems, as well as appointment scheduling practices and policies. HRSA plans to administer the clinician survey using both web and paper modes, with computer-assisted telephone interviewing follow-up. HRSA plans to administer the practice survey using paper mode, with computer-assisted telephone interviewing follow-up.

HRSA will use claims data, supplemented with a list of members of HIV medical societies, and attendees at the 2010 HIV clinical conference, to identify the frame of clinicians (physicians, nurse practitioners, and physician assistants) in all 50 states and the District of Columbia who provide a significant amount of medical care to patients with HIV or AIDS. By using a national probability sampling strategy, the results of the clinician survey can be used to generate national and regional estimates of HIV clinician supply.

HRSA will use quantitative and qualitative methods to document and quantify the extent of the HIV clinician workforce surplus or shortage, predict the future requirements for and supply of HIV clinicians, and identify best practice models and strategies for expanding the capacity of HIV practices and providers to meet the growing demand for care.

The ultimate goal of the study will be to develop proposed action steps that HRSA and other federal and state agencies can use to enhance the capacity of the HIV clinician workforce to achieve the targets set forth in the 2010 White House Office of HIV/AIDS Policy's National HIV/AIDS Strategy and Implementation Plan.

The annual estimate of burden of the two surveys is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HIV Clinician Survey	3,500	1	3,500	0.33	1,155
HIV Practice Survey	350	1	350	0.50	175
Total	3,850	.....	3,850	.....	1,330

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: December 30, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–224 Filed 1–9–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Criteria for Determining Priorities Among Correctional Facility Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: In accordance with the requirements of section 333A(b)(1) of the Public Health Service (PHS) Act, as amended by the Health Care Safety Net Amendments of 2002, 42 U.S.C. 254f–1(b)(1), the Secretary of HHS shall establish the criteria which she will use to make determinations under section 333A(a)(1)(A) of the health professional shortage areas (HPSAs) with the greatest shortages. This notice sets forth revised criteria for determining correctional facility HPSA scores.

DATES: Effective January 10, 2012.

FOR FURTHER INFORMATION CONTACT: CAPT Phil Budashewitz, Director, Office of Policy and Program Development, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 8A–55, Rockville, Maryland 20857, ((301) 594–4130).

SUPPLEMENTARY INFORMATION: Section 332 of the PHS Act, 42 U.S.C. 254e, provides that the Secretary shall designate HPSAs based on criteria established by regulation. HPSAs are defined in Section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. The required regulations setting forth the criteria for designating HPSAs are codified at 42 C.F.R. Part 5.

Section 333A(a)(1)(A) of the PHS Act requires that the Secretary give priority in the assignment of National Health Service Corps personnel to entities serving HPSAs with the greatest health professional shortage. Section 333A(b) of the PHS Act requires that the Secretary establish criteria specifying the manner in which she determines HPSAs of greatest shortage and publish the criteria, and any revisions to the criteria, in the **Federal Register**. The criteria established by the Secretary create a method for scoring HPSAs based on relative shortage.

Correctional Facility HPSA Scores

Correctional facility HPSA scores are currently extrapolated from the degree-of-shortage (DOS) groups determined in the primary care, mental health, and dental HPSA designation process. See 42 CFR part 5, Appendices A, B and C. The determination of DOS groups for these facilities is based primarily on internee/inpatient-to-provider ratios, which is similar to the population-to-provider ratio used for other types of HPSAs. This notice revises the criteria for scoring primary care, mental health and dental correctional facility HPSAs. The Secretary will utilize a combination of the correctional facility's DOS group and an indicator of the supply of providers in the geographic area where the facility is located, as measured by the designation of a geographic HPSA and its relative geographic HPSA score.

The table below defines the points correctional facilities will receive based on their DOS group:

Degree-of-Shortage Group 1	12 points.
Degree-of-Shortage Group 2	6 points.
Degree-of-Shortage Group 3	3 points.

The table below defines the points correctional facilities will receive based on their location in a geographic HPSA and the geographic HPSA's score:

Geographic HPSA score between 20–25 (20–26 in the case of dental or mental health HPSAs).	12 points.
Geographic HPSA score between 14–19.	9 points.
Geographic HPSA score between 8–13.	6 points.
Geographic HPSA score between 1–7.	3 points.
Not located in a geographic HPSA.	0 points.

Points for the DOS and the geographic HPSA score will be equally weighted. The maximum HPSA score for a correctional facility is 24.

Paperwork Reduction Act

The criteria used to make determinations under section 333A(a)(1)(A) of the HPSAs with the greatest shortages described in this announcement will not involve data collection activities that fall under the purview of the Paperwork Reduction Act of 1995. If the methods for determining HPSAs with the greatest shortages fall under the purview of the Paperwork Reduction Act, HRSA will seek OMB clearance for proposed data collection activities.

Dated: January 4, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–223 Filed 1–9–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2012.

The National Advisory Committee on Rural Health will convene its seventieth meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Time:

February 15, 2012, 2 p.m.–5 p.m.
February 16, 2012, 8:45 a.m.–4 p.m.
February 17, 2012, 8:45 a.m.–11:15 a.m.

Place: The Fairfax at Embassy Row, 2100 Massachusetts Avenue NW., Washington, DC 20008.

Phone: (202) 293–2100.

The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides counsel and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: Wednesday afternoon, February 15, at 2 p.m., the meeting will be called to order by the Chairperson of the Committee: The Honorable Ronnie Musgrove. This will be followed by presentations on provisions from the Affordable Care Act (ACA). The Committee will be examining potential long-term impacts on the rural health care infrastructure. The day will conclude with a period of public comment at approximately 4:30 p.m.

Thursday morning, February 16, at 9 a.m., the Committee will continue to hear panel presentations on ACA-related provisions and will then break into subcommittees on each of those topics for further discussion. The day will conclude with a period of public comment at approximately 4:30 p.m.

Friday morning, February 17, at 9 a.m., the Committee will summarize key findings from the meeting and develop a work plan for the next quarter and the June meeting.

FOR FURTHER INFORMATION CONTACT: Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services,

Health Resources and Services Administration, Parklawn Building, Room 5A–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Aaron Wingad at the Office of Rural Health Policy (ORHP) via telephone at (301) 443–0835 or by email at *awingad@hrsa.gov.* The Committee meeting agenda will be posted on ORHP's Web site *http://www.hrsa.gov/advisorycommittees/rural/.*

Dated: December 30, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–225 Filed 1–9–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information: 1651–0092.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 12, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use,* is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by Section 309 of the Tariff Act of 1930, and is provided for by 19 CFR 10.59(e). CBP Form 5125 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_5125.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of increasing the estimated response time from five minutes to twenty minutes. There are no changes to the information collected or to CBP Form 5125.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 165.

Dated: January 5, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–258 Filed 1–9–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–01]

Notice of Proposed Information for Public Comment for: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The 1998 Public Housing Reform Act allowed the Mixed-Finance development of public housing units. This meant that Public Housing Authorities (PHAs) could create public housing projects using public housing grant or capital funds and non-HUD sources of funds, subject to HUD's approval. This Information Collection pertains to the information that HUD collects to perform due diligence in order to approve the mixed-finance development of public housing prior to a financial closing and the start of construction or rehabilitation activities. Applicants describe ownership, the type, size, and number of units, construction schedule, construction and permanent financing, property management, how public housing operating subsidy will be provided to the project and other operation plans. New developments may be made up of a variety of housing types: rental, homeownership, private, subsidized, and public housing. These new communities are built for residents with a wide range of incomes, and are

designed to fit into the surrounding community.

DATES: *Comments Due Date:* March 12, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB Control Number (2577–New) and should be sent to: HUD Desk Officer Office of Management and Budget, New Executive Office Building, Washington, DC 20503: Fax (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4176, Washington, DC 20410; telephone: (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette.Pollard@hud.gov.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units.

OMB Control Number, if applicable: 2577–New.

Description of the need for the information and proposed use: HUD is requesting a new, separate OMB Control Number for all existing information collection documents needed to perform due diligence before approving a Mixed-Finance financial closing and committing HUD public housing funds to the development of a Mixed-Finance project. Most of the information collection documents included in this request resolve PRA non-compliance issues. The documents are currently collected by HUD, have been standardized or modified to decrease burden hours. One new document automates existing manual financial calculations.

Agency form numbers, if applicable: HUD–50030, HUD–50029, HUD–50150, HUD–50151, HUD–50154, HUD–50155.

Members of Affected Public: State and Local Governments, Public Housing Agencies, Real Estate Developers, Public Housing Residents.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 130 annually, responding once with each housing development financial closing, with 920 annual responses. The total reporting burden is 16,995 hours.

Status of the proposed information collection: Existing collection pending an OMB control number.

Authority: section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 28, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–252 Filed 1–9–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N265; FF08E00000–FXES11120800000F2–123–F2]

Draft Environmental Assessment and Proposed Single-Species Habitat Conservation Plan for the Proposed Shiloh IV Wind Plant Project, Solano County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft environmental assessment and proposed habitat conservation plan; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have prepared a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) for the Proposed Shiloh IV Wind Plant Project in response to an application from enXco (applicant) for a 36-year incidental take permit for one species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of one federally listed animal, the Central California Distinct Population Segment of the California tiger salamander. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's habitat conservation plan (plan). We request data, comments, new information or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the applicant's permit application, plan, and the associated EA.

DATES: To ensure consideration, please send your written comments by March 12, 2012.

ADDRESSES: Please address written comments to Mike Thomas, Conservation Planning Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address shown above or at (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act). We have prepared this EA to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting proposed habitat conservation plan (plan).

The applicant proposes to develop a plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The proposed plan will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of a federally listed species to be covered by the plan, and the habitats upon which it depends, resulting from construction and operation of the proposed Shiloh IV Wind Plant Project within the proposed plan area, to include portions of the Montezuma

Hills Wind Resource Area in Solano County, California.

Background Information

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks incidental take authorization for the following federally listed threatened species—Central California Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*)—which we will refer to as the covered species in this notice.

The proposed covered activities under this plan include constructing and installing the wind turbines and associated electrical facilities and access roads, expanding the existing enXco operations and maintenance yard by 5,000 square feet, installing a new 230-kilovolt substation (to be built on an existing pad), maintaining the new wind turbines and the associated facilities, and, later, decommissioning the facility and restoring the site. Specifically, proposed covered activities include grading, excavating to support access roads, trenching to install underground electrical lines, installing of erosion-control measures during covered construction and maintenance activities, installing new gravel roads, pouring a cement footing to support each turbine, installing of other infrastructure, gravel placement for road maintenance, vehicle travel, transport of equipment and supplies, and other similar actions necessary to support the construction, maintenance, and operation of the proposed Shiloh IV Wind Energy Project.

Alternatives in the Draft Environmental Assessment

The proposed action presented in the draft EA will be compared to the no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared. Other alternatives considered, including their potential impacts, are also addressed in the draft EA.

No Action Alternative

Under the No Action alternative, we would not issue a permit, and the applicant would not construct the project. The no-action alternative would not achieve the applicant's objectives and would not allow the development of the project in a designated wind resource area.

Reduced Take Alternative

Under the Reduced Take Alternative, wind turbines would be sited farther than 500 feet from aquatic habitats, which would reduce the number of turbines that would be constructed. This alternative would not meet the applicant's objective of a generating capacity of 100 megawatts.

Proposed Alternative

The Shiloh IV Wind Plant Project would be constructed on 3,100 acres encompassing the Plan Area in the Collinsville–Montezuma Hills Wind Resources Area, south of State Route 12 in Solano County, California. The Plan Area is within and surrounded by existing energy-producing facilities and will effectively repower the enXco V project, currently present on the site. Adjacent energy-producing facilities include Shiloh I to the north and west, High Winds to the east, Shiloh II to the north, and Montezuma II to the south and east.

The applicant proposes to develop its wind energy facility that would deliver renewable energy to the Pacific Gas & Electric California Independent System Operator power grid to meet California's Renewable Portfolio Standard goals and help reduce greenhouse gas emissions pursuant to California Assembly Bill 32 (Global Warming Solutions Act) and Solano County's General Plan. Up to 50 wind turbines would be built in the Plan Area. The project would be constructed in a location that supports suitable habitat for the Central California Distinct Population Segment of the California tiger salamander, a species listed as threatened under the Act. The Central California Distinct Population Segment of the California tiger salamander is the only proposed ''Covered Species.''

The ''Covered Activities'' included in the plan include the construction and installation of wind turbines and associated facilities and access roads, maintenance of the wind turbines and associated facilities, and decommissioning of the site. All turbines are proposed to be located in cultivated agricultural lands. The project is expected to result in permanent loss of 25 acres of agricultural land. Temporary construction effects are expected on 130 acres of agricultural land (115 acres during construction and up to 15 acres for maintenance activities) and approximately 2 acres of grassland. All land cover types affected would be restored within 1 year of impact. No direct effects on aquatic breeding habitat would occur.

The applicant proposes to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities by fully implementing the plan. The following mitigation measures will be implemented for Central CTS as part of the plan: Minimize impact area; avoid injury of the covered species during implementation of Covered Activities; avoid habitat impacts associated with erosion and sedimentation generated by Covered Activities; minimize the risk of project-related toxic spills that could adversely affect the covered species or its habitat; restore all temporarily disturbed covered species' habitat in the Plan Area to pre-project conditions within 1 year of disturbance; ensure implementation of the avoidance and minimization measures; and offset unavoidable permanent habitat impacts on the covered species through the

purchase of approximately 37 acres of credits at a Service and California Department of Fish and Game-approved conservation bank, to ensure temporary and permanent effects are mitigated.

Under the proposed action alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above and in more detail in the plan.

Environmental Review and Next Steps

As described in our EA, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as FONSI under NEPA (42 U.S.C. 4321 *et seq.*), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EA articulates the project effects on all potential resources that could be adversely affected, including aesthetics, agricultural resources, air quality, climate change, biological resources, cultural resources, geology, minerals and paleontological resources, hazardous materials, hydrology and water quality, land use and planning, noise, public health hazards, recreation, traffic and transportation, and utilities and public service systems. It also includes an analysis of alternatives, and other required analyses such as unavoidable adverse effects, irreversible and irretrievable commitments of resources, short-term uses versus long-term productivity and cumulative effects, and the environmentally preferable alternative (the proposed project).

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

We will identify in the FONSI if we need to prepare further NEPA documentation. We will also consider public comments on the draft EA when making the final determination on whether to prepare additional NEPA documents on the proposed action.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Availability of Documents

You may obtain copies of the permit application, plan, and EA from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Central California Distinct Population Segment of the California tiger salamander from the implementation of the Covered Activities described in the plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2012–288 Filed 1–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N218; BAC–4311–K9–S3]

Plum Tree Island National Wildlife Refuge, Poquoson, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Plum Tree Island National Wildlife Refuge (the refuge, NWR), which is located in Poquoson, VA. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge.

DATES: We will announce opportunities for public input throughout the CCP process in the **Federal Register**, local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/plumtreeisland/refuge_planning.html*.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: fw5rw_evrnwr@fws.gov. Include ''Plum Tree Island CCP'' in the subject line of the message.

Fax: Attn: Meghan Carfioli, (804) 829–9606.

U.S. Mail: U.S. Fish and Wildlife Service, Eastern Virginia Rivers National Wildlife Refuge Complex—Charles City Sub-Office, 11116 Kimages Road, Charles City, VA 23030.

In-Person Drop-off: You may drop off comments during regular business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Meghan Carfioli, Planning Team Leader, (804) 829–5413 (phone) or Andy Hofmann, Project Leader, Eastern Virginia Rivers National Wildlife Refuge Complex, (804) 333–1470 (phone), *fw5rw_evrnwr@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Plum Tree Island NWR, in the city of Poquoson, VA. This notice complies with our CCP policy to advise other Federal and State agencies, Tribes, and

the public of our intention to conduct detailed planning on this refuge.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose of developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Federal, Tribal, State, and local governments, agencies, organizations, and the public. Throughout the process, we will have formal comment periods and hold public meetings to gather comments, issues, concerns, ideas, and suggestions for the future management of Plum Tree Island NWR. You may also send comments during the planning process by mail, email, or fax (see **ADDRESSES**).

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Plum Tree Island National Wildlife Refuge

Plum Tree Island NWR is one of four refuges that comprise the Eastern Virginia Rivers NWR Complex. The 3,502-acre refuge is located along the Atlantic Flyway in the city of Poquoson, VA. It was established in 1972 to conserve wetlands and important migratory bird habitat in the lower Chesapeake Bay. The refuge's salt marsh, scrub-shrub, and forest habitats support a variety of native wildlife species, including waterfowl, marshbirds, and shorebirds. The refuge's beaches are also home to the federally threatened northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*).

The U.S. Department of Defense previously administered the refuge lands and used all but the refuge's 200-acre Cow Island Tract as a gunnery and bombing range. Extensive unexploded ordnance remains on the refuge, posing serious safety concerns. Most of the refuge is closed to public access. The only public use offered is an annual, permit-only, waterfowl hunt on the Cow Island Tract.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified several preliminary issues, concerns, and opportunities that we intend to address in the CCP. These include the following:

- Unexploded ordnance on the refuge and its implications for refuge management and public access;
- The potential for climate change to impact refuge resources;
- The potential for land acquisition and conservation easements within the existing, approved boundary;
- Opportunities to collaborate with partner organizations for off-refuge interpretation and education programming.

We expect that members of the public, our conservation partners and Federal, State, Tribal, and local governments may identify additional issues during public scoping.

Public Meetings

During the planning process, we will hold public meetings for individuals, organizations, and agencies to provide comments, issues, concerns, and suggestions about refuge management. When we schedule formal comment periods and public meeting(s), we will announce them in the **Federal Register**, local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/plumtreeisland/refuge_planning.html.*

You can also obtain the schedule from the planning team leader or project leader (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 5, 2011.

Salvatore M. Amato,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–293 Filed 1–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–MB–2011–N256; FXMB12310100000P2–123–FF01M01000]

Special Purpose Permit Application; Draft Environmental Assessment; Hawaii-Based Shallow-Set Longline Fishery

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service, have received an application under the Migratory Bird Treaty Act of 1918, as amended (MBTA), from the Pacific Islands Regional Office of the National Marine Fisheries Service (NMFS), Department of Commerce, for a permit for the incidental take of migratory birds in the operation of the Hawaii-based shallow-set longline fishery that targets swordfish (*Xiphias gladius*). If issued, the permit would be the first of its kind under our Special Purpose permitting regulations. We invite public comment on the draft environmental assessment (DEA), which evaluates alternatives associated with this permit application.

DATES: To ensure consideration, please send your written comments by February 9, 2012.

ADDRESSES: You may download a copy of the DEA on the Internet at *http://*

www.fws.gov/pacific/migratorybirds/nepa.html. Alternatively, you may use one of the methods below to request a hard copy or a CD–ROM. Please specify the ''DEA for the NMFS MBTA Permit'' on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email: pacific_birds@fws.gov*. Include ''DEA for the NMFS MBTA Permit'' in the subject line of the message.
- *U.S. Mail:* Please address written comments to Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE 11th Ave., Portland, OR 97232.
- *Fax:* Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, (503) 231–2019; Attn.: DEA for the NMFS MBTA Permit.

FOR FURTHER INFORMATION CONTACT: Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, (503) 231–2019 (phone); *pacific_birds@fws.gov* (email, include ''DEA for the NMFS MBTA Permit'' in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service (Service) has received an application from NMFS for a special purpose permit under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–711) (MBTA). The permit, if issued, would authorize incidental take of migratory birds, principally two species of albatross, by NMFS in its regulation of the shallow-set longline fishery based in Hawaii. This fishery targets swordfish and operates on the high seas and within the United States Exclusive Economic Zone (EEZ). The migratory birds incidentally taken in the fishery are predominantly Laysan and Black-footed Albatross (*Phoebastria immutabilis* and *P. nigripes*). One individual each of Sooty Shearwater (*Puffinus griseus*) and Northern Fulmar (*Fulmarus glacialis*) have been reported taken in the fishery. The endangered Short-tailed Albatross (*Phoaebastria albatrus*) occurs in the area where the fishery operates and has been observed from Hawaii-based longline fishing vessels, but no take of this species has been reported. Consultation under section 7(a)(2) of the Endangered Species Act is in progress to assess the impacts of this fishery on the Short-tailed Albatross.

The Draft Environmental Assessment (DEA) analyzes the alternatives associated with this permit application in light of our permitting regulations in the Code of Federal Regulations (CFR) in 50 CFR 21.27 under the MBTA. If we issue the permit at issue in this environmental assessment, it will be the first permit under these regulations issued to authorize incidental take of migratory birds by an agency regulating a commercial, non-conservation activity.

Background

Regulations under the MBTA allow the Service to issue permits to take migratory birds for various reasons, such as depredation and scientific collecting. One of those regulations, 50 CFR 21.27, allows the Service to issue special purpose permits in circumstances not addressed by specific permit regulations. An application for a special purpose permit must meet the general permitting conditions set forth in 50 CFR 13 and make a ''sufficient showing'' of:

- Benefit to the migratory bird resources,
- Important research reasons,
- Reasons of human concern for individual birds, or
- Other compelling justification.

We will issue a special purpose permit only if we determine that the take is compatible with the conservation intent of the MBTA. Standard conditions for permit issuance include those described in 50 CFR 13.21(e) and 21.27(c).

The Hawaii-based longline fishery that targets swordfish is a pelagic or open-ocean fishery that began in the late-1980s and has since been managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region. Shallow-set longlining consists of deploying a mainline 18 to 60 nautical miles in length with floats at 360-meter (m) intervals. The mainline depth is 25 to 75 m. About four branchlines, 10 to 20 m in length, with baited hooks and artificial light sticks to attract swordfish, are suspended between floats, for a total of approximately 700 to 1,000 hooks per deployment. The line is deployed, or ''set,'' after sunset, left in the water overnight, and retrieved, or ''hauled,'' in the morning. Seabirds, as well as sea turtles and other non-target species, can be killed or injured during either deployment or retrieval of the lines, when they are unintentionally hooked or entangled in fishing gear.

The shallow-set sector of the Hawaii-based longline fishery operates under NMFS regulations requiring the use of measures to avoid and minimize the injury and death of seabirds (67 FR 34408, 69 FR 17329, 70 FR 75075). These regulations were in place when the fishery was reopened in 2004 following a court-ordered closure in 2001 that addressed concerns about endangered sea turtles. Between 2004 and 2010, the fishery has taken (killed or injured) an estimated total of 332 Laysan and 118 Black-footed albatrosses, an annual average of roughly 55 and 20 birds of each species, respectively. These levels of take are expected to continue, and are not thought to pose a risk of population-level impacts or change in conservation status for either species.

The Pacific Islands Regional Office of NMFS manages and regulates this fishery under the Fishery Management Plan, which was developed by the Western Pacific Regional Fishery Management Council and approved by the Secretary of Commerce, in accordance with the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) (MSA). Under the MSA, Fishery Councils are vested with the authority to propose amendments to Fishery Management Plans. NMFS may approve or partially approve proposed amendments; approvals are codified as Federal regulations. In 2010, regulations went into effect to implement an amendment that removed the restriction on fishing effort (annual number of sets) in this fishery that had been in place since 2004. Because fishing effort never reached the limit that has now been removed, and effort is increasing only slowly, NMFS anticipates that total effort in the fishery will not increase substantially between 2011 and 2014, the period that would be covered by a permit under the MBTA.

Applicant's Proposal

NMFS proposes to continue operation of the shallow-set fishery under current regulations that require the use of measures to avoid and minimize take of migratory birds. In addition to continued implementation of these regulations, NMFS proposes to analyze the high proportion of the total observed take in this fishery that occurs as injured birds. Specifically, NMFS would examine the role of untended or ''lazy'' lines, offal discards, and other practices in making hooks and gear available to seabirds and possibly attracting and habituating seabirds to longline vessels, especially during gear retrieval. The results of these assessments would be reported to the Service, and reports

would include any new information that could further reduce the take of seabirds in the fishery or point to research needed to achieve reduction. If new analyses and qualitative assessments lead to identification of means to reduce take of migratory birds, NMFS would develop these remedies so that they could be incorporated into NMFS regulatory processes in a timely fashion. If new information does not lead to modified or new practices that could reduce take of migratory birds in the fishery, NMFS would develop study plans for needed research and/or a proposal or proposals to offset the unavoidable take in the fishery in a manner that would not affect operation of the fishery. These additional activities were described in materials submitted as part of the permit application, and if we issue the permit after completion of the National Environmental Policy Act (NEPA) process, then these commitments would become conditions of the permit.

The Service independently evaluated the estimated total and average number, and the nominal rate, of seabirds taken in the fishery. This evaluation, in relation to the existing avoidance and minimization measures, proposed new activities, and potential offsetting conservation measures, is discussed in the DEA, along with the implications for direct, indirect, and cumulative effects under three alternatives.

Next Steps

The public process for the proposed Federal permit action will be completed after the public-comment period, at which time we will evaluate the permit application and comments submitted on the DEA and determine whether the application meets the permitting requirements under the MBTA and applicable regulations. Upon completion of that evaluation we will select our course of action among the three alternatives identified in the DEA. We then will either issue a final environmental assessment and a Finding of No Significant Impact or initiate the preparation of an Environmental Impact Statement.

Public Comments

We invite public comment on the DEA. You may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: December 23, 2011.

Richard Hannan,

Deputy Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–192 Filed 1–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N221; BAC–4311–K9–S3]

Massasoit National Wildlife Refuge, Plymouth, MA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Massasoit National Wildlife Refuge (the refuge, NWR) in Plymouth, Massachusetts. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge.

DATES: We will announce opportunities for public input throughout the CCP process in the **Federal Register,** local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/planning/Eastern%20Mass%203/ccphome.html.*

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: northeastplanning@fws.gov. Include ''Massasoit CCP'' in the subject line of the message.

Fax: Attn: Carl Melberg, (978) 443–2898.

U.S. Mail: Eastern Massachusetts National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, 73 Weir Hill Road, Sudbury, MA 01776.

In-Person Drop-off: You may drop off comments during regular business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Carl Melberg, Planning Team Leader, (978) 443–4661 extension 32 (telephone), or Libby Herland, Project Leader, (978) 443–4661 extension 11 (telephone), or *fw5rw_emnrw@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Massasoit NWR, in Plymouth, Massachusetts. This notice complies with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management and conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments, agencies,

organizations, and the public. Throughout the process, we will have formal comment periods and hold public meetings to gather comments, issues, concerns, ideas, and suggestions for the future management of Massasoit NWR. You may also send comments anytime during the planning process by mail, email, or fax (see **ADDRESSES**).

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for compliance with those laws and regulations.

Massasoit National Wildlife Refuge

Massasoit NWR is one of eight refuges that comprise the Eastern Massachusetts NWR Complex. Massasoit NWR was established in 1983 to conserve the federally endangered northern red-bellied cooter (*Pseudemys rubriventris bangsi*), as well as other native wildlife and plant species. The 209-acre refuge is located in Plymouth, Massachusetts, and is part of a larger 3,269-acre area designated as critical habitat for the cooter. Research, monitoring, and recovery efforts for this turtle take place on the refuge. To protect the turtle from harassment, harm, and poaching, the refuge is closed to public access.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified several preliminary issues, concerns, and opportunities that we intend to address in more detail in the CCP. These include:

- The refuge's closure to public use;
- The refuge's prescribed burning program;
- The opportunity to protect the entire extant population of the northern red-bellied cooter in Plymouth County, as described in the species' recovery plan;
- The opportunity to provide and manage New England cottontail habitat;
- The opportunity to evaluate a possible expansion of the refuge's approved boundary;
- The impacts of climate change on refuge resources;
- The potential to improve community relations and increase outreach; and
- The opportunity to increase local awareness of the refuge and the NWRS.

We expect that during public scoping, members of the public, our conservation partners, Federal and State agencies, and Tribal governments may identify additional issues.

Public Meetings

During the planning process, we will hold public meetings for the public to provide comments, issues, concerns, ideas, and suggestions about refuge management. When we schedule formal comment periods and public meeting(s), we will announce them in the **Federal Register,** local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/planning/Eastern%20Mass%203/ccphome.html.* You can also obtain the schedule from the planning team leader or project leader (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 14, 2011.

Henry Chang,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2012–297 Filed 1–9–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–638 (Third Review)]

Stainless Steel Wire Rod From India

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on stainless steel wire rod From India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner David S. Johanson did not participate in this determination.

Background

The Commission instituted this review on July 1, 2011 (76 FR 38686) and determined on October 4, 2011, that it would conduct an expedited review (76 FR 64105, October 17, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on January 4, 2012. The views of the Commission are contained in USITC Publication 4300 (January 2012), entitled *Stainless Steel Wire Rod From India: Investigation No. 731–TA–638 (Third Review*).

By order of the Commission.

Issued: January 4, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–176 Filed 1–9–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–823]

Certain Kinesiotherapy Devices and Components Thereof; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 2, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Standard Innovation Corporation of Ottawa, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware. Supplements to the complaint were filed on December 19, 2011, and December 27, 2011. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain kinesiotherapy devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,931,605 (''the '605 patent' '') and U.S. Patent No. D605,779 (''the '779 patent' ''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain kinesiotherapy devices and components thereof that infringe one or more of claims 1–7, 9–21, 23, 24, 26, 33–40, 42–54, 56, 57, 59, 66–73, 75–90, and 92 of the '605 patent and the claim of the '779 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Standard Innovation Corporation, 1130 Morrison Drive, Suite 330, Ottawa, ON, Canada K2H 9N6.

Standard Innovation (US) Corp., Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: LELO Inc., 4320 Stevens Creek Blvd., Suite 205, San Jose, CA 95129.

Leloi AB, Brunnsgatan 8, Ill 38 Stockholm, Sweden.

LELO, Room 701–706 Guobang Garden, No. 10, 396 South Wulumuqi Road, Shanghai, China 20003.

Natural Contours Europe, Tweede Weteringdwarsstraat 40, Amsterdam 1017 SX, The Netherlands.

Momentum Management, LLC a.k.a. Bushman Products, 1206 W Jon Street, Torrance, CA 90502.

Evolved Novelties, Inc., 9035 Independence Ave. Canoga Park, CA 91304.

Nalpac Enterprises, Ltd. d/b/a Nalpac, Ltd., 1111 E. 8 Mile Rd., Ferndale, MI 48220.

E. T.C., Inc. d/b/a Eldorado Trading, Company, Inc., 2325 West Midway Blvd., Broomfield, CO 80020.

Williams Trading Co., Inc., 9250 Commerce Highway, Pennsauken, NJ 08110.

Honey's Place, Inc., 640 Glenoaks Blvd., San Fernando, CA 91340–1419.

Lover's Lane & Co., 46750 Port St., Plymouth, MI 48170–6031.

PHE, Inc. d/b/a Adam & Eve, 302 Meadowland Drive, Hillsborough, NC 27278.

Castle Megastore Group, Inc., 1045 S. Edward Drive, Tempe, AZ 85281.

Shamrock 51 Management Company, Inc., d/b/a Fairvilla. Com, 105 Candace Drive, Unit 109, Maitland, FL 32751.

Paris Intimates, LLC, 4244 MacQueen Dr., West Bloomfield, MI 48323.

Drugstore.com, Inc., 411 108th Avenue NE., Suite 1400, Bellevue, WA 98804.

Peekay Inc., 901 W. Main Street, Suite A, Auburn, WA 98001.

Mile Inc. d/b/a Lion's Den Adult, 110 East Wilson Bridge Road, Suite 110, Worthington, OH 43085.

Marsoner, Inc. d/b/a Fascinations, 315 South Bracken Lane, Chandler, AZ 85224.

Love Boutique-Vista, LLC d/b/a Deja vu, 2130 Industrial Court, Vista, CA 92081.

Toys in Babeland LLC, 707 East Pike Street, Seattle, WA 98122.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 4, 2012.
By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–177 Filed 1–9–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–822]

Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 30, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Freescale Semiconductor, Inc. of Austin, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits, chipsets, and products containing same including

televisions by reason of infringement of certain claims of U.S. Patent No. 5,467,455 (''the '455 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2012, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits, chipsets, and products containing same including televisions that infringe one or more of claims 9 and 10, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Freescale Semiconductor, Inc., 6501 William Cannon Drive West, Austin, TX 78735.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

MediaTek Inc., No. 1 Dusing Road 1, Hsinchu Science Park, Hsinchu City, Taiwan.

Zoran Corporation, 1390 Kifer Road, Sunnyvale, CA 94086.

Vizio, Inc., 39 Tesla, Irvine, CA 92618.

Sanyo Electric Co., Ltd., 5–5 Keihan-Hondori, 2-chome Moriguchi, Osaka, Japan.

Sanyo North America Corporation, 2055 Sanyo Avenue, San Diego, CA 92154.

Sanyo Manufacturing Corporation, 3333 Sanyo Road, Forrest City, AR 72335.

TPV Technology Limited, Suite 1023, 10th Floor, Ocean Centre, Harbour City, 5 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong.

TPV International (USA) Inc., 3737 Executive Center Drive, Suite 261, Austin, TX 78731.

Top Victory Electronics (Taiwan) Co., Ltd., Zhounghe City, Taiwan.

Top Victory Electronics (Fujian) Co., Ltd., Fuqing City, China.

AOC International (USA) Ltd., 47490 Seabridge Drive, Fremont, CA 94538.

Envision Peripherals, Inc., 47490 Seabridge Drive, Fremont, CA 94538.

Amtran Technology Co., Ltd., No. 268, LianCheng Road, Jhonghe District, Xinbei City, Taiwan.

Amtran Logistics, Inc., 9 Goddard, Irvine, CA 92618.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Commission notes that issues regarding whether Complainant may be precluded from asserting its complaint in light of a Commission decision in a prior investigation involving the same patent may be present here. In instituting this investigation, the Commission has not made any determination as to whether Complainant is so precluded. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination (ID) under Rule 210.42(c), 19 CFR 210.42(c). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44 and 210.45, 19 CFR 210.43, 210.44, and 210.45.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: January 4, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–178 Filed 1–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Extension of a Currently Approved Information Collection; Claim for Damage, Injury, or Death

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 76, Number 215, page 68787, on November 7, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call the Civil Division's Torts Branch at (202) 616–4400 or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Claim for Damage, Injury, or Death.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: CIV SF 95. Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Not-for-profit institutions, and State, Local, or Tribal Governments. *Abstract:* This form is utilized by those persons making a claim against the United States Government under the Federal Tort Claims Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 100,000 respondents who will each require 6 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 600,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–163 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0003]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested; Annual Progress Report for the STOP Formula Grants Program

ACTION: 30-Day Notice of Information Collection under Review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 215, page 68786, on November 7, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency=s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the STOP Formula Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 56 STOP state administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)) and their subgrantees. The STOP Violence Against Women

Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system=s response to violence against women. The STOP Formula Grants Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grants Program. The grant funds must be distributed by STOP state administrators to subgrantees according to a statutory formula (as amended by VAWA 2000 and by VAWA 2005).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly 2500 subgrantees [1] to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grants Program is divided into sections that pertain to the different types of activities that subgrantees may engage in and the different types of subgrantees that receive funds, *i.e.* law enforcement agencies, prosecutors= offices, courts, victim services agencies, etc.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 2,556 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–167 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–FX–P

[1] Each year the number of STOP subgrantees changes. The number 2,500 is based on the number of reports that OVW has received in the past from STOP subgrantees.

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested; Semi-Annual Progress Report for the Grants To Encourage Arrest Policies and Enforcement; Protection Orders Program

ACTION: 30-Day Notice of Information Collection under Review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 215, page 68787 on November 7, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0006. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees from the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) which recognizes that sexual assault, domestic violence, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial scrutiny and management of offender behavior.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (Arrest Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An Arrest Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–168 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Thomas Staben, et al.,* Civil Action No. CV–10–4419–JST (FMOx), was lodged with the United States District Court for the Central District of California on December 30, 2011.

This proposed Consent Decree concerns a complaint filed by the United States against Thomas Staben and T.A. Staben, Inc., pursuant to Sections 301 and 309 of the Clean Water Act, 33 U.S.C. 1311 and 1319. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore portions of the impacted area, provide compensatory mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Michael C. Augustini, Trial Attorney, P.O. Box 7611, Washington, DC 20044, and refer to *United States* v. *Thomas Staben, et al.,* DJ #90–5–1–1–18403.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Central District of California, 411 West Fourth Street, Room 1053, Santa Ana, California 92701–4516. In addition, the proposed Consent Decree may be viewed at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2012–207 Filed 1–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Explosives License or Permit

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Christopher.R.Reeves@usdoj.gov*, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.13/5400.16. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individual or households. The form has been revised to include the new classes (types) of explosives for manufacturers, dealers, importers and users of explosives. The current type codes are obsolete. ATF will now categorize explosives licenses and permits by only six major classes. The classes are: Manufacturer, Dealer, Importer, User, User-Limited and Type 60. The form will still capture the types of explosives materials being manufactured, imported, acquired and used by explosives licensees and permittees, however, they will no longer be classified by type code.

Need for Collection

All persons intending to engage in the business of manufacturing, dealing, importing or using explosives materials must submit an ATF Form 5400.13/5400.16 Application for Explosives License or Permit to the Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The explosives application will be processed by the ATF Federal Explosives Licensing Center (FELC), and upon approval, the applicant shall receive their explosives license or permit within a ninety-day timeframe.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 1 hour and 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution

Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–158 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Firearms & Explosives Services Division Customer Service Survey

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas DiDomenico, *FESDSurvey@atf.gov* Chief, Firearms and Explosives Services Division, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Firearms & Explosives Services Division Customer Service Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None.

Need for Collection

The Firearms & Explosives Services Division (FESD) provides dealer licensing and other services related to the importation and transfers of weapons within the firearms and explosives industry. This anonymous survey would allow FESD to gauge customer satisfaction and correct potential deficiencies. Internal audits have demonstrated the need for a division level survey to enhance greater customer satisfaction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The number of respondents cannot be determined because a survey has not been done before. It is estimated that respondents will take five minutes to complete the online survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden cannot be estimated as the survey is voluntary and the number of respondents cannot be determined.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–159 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0015]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration and Application for Registration Renewal DEA Forms 363 and 363a

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 76 FR 66085, October 25, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2012. This process is conducted in accordance with 5 CFR 1320.10. If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive Springfield, VA 22152, (202) 307–7297, or the DOJ Desk Officer at (202) 395–3897.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0015

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* DEA forms 363 and 363a. *Component:* Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions; State, local, and tribal government. *Abstract:* Narcotic treatment programs that dispense narcotic drugs to individuals for maintenance or detoxification treatment must register annually with DEA. Registration is needed for control measures and helps to prevent diversion by ensuring a closed system of distribution of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA 363 is submitted on an as needed basis by persons seeking to become registered; DEA 363a is submitted annually thereafter to renew existing registrations.

	Number of annual respondents	Average time per response	Total annual hours
DEA–363 (paper)	24	0.5 hours (30 minutes)	12
DEA–363 (electronic)	80	0.13 hours (8 minutes)	10.66
DEA–363a (paper)	179	0.5 hours (30 minutes)	89.5
DEA–363a (electronic)	1,201	0.13 hours (8 minutes)	160.13
Total	1,484		272.29

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection takes 273 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–161 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; Monthly Return of Human Trafficking Offenses Known to Law Enforcement

ACTION: 60-day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Monthly Return of Human Trafficking Offenses Known to Law Enforcement.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* No form number. *Sponsor:* Criminal Justice Information Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, Federal, and tribal law enforcement agencies. *Brief Abstract:* This collection is needed to collect information on human trafficking incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents that submit monthly for a total of 217,296 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 18,108 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitutional Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–160 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Strategic Essentials for the Advancement of Women Executives in Corrections; Submission Date Extended

The following funding opportunity was published on Thursday, December 15, 2011. Document Number 2011–32121. Solicitation for a Cooperative Agreement—Strategic Essentials for the Advancement of Women Executives in Corrections. Funding Opportunity Number 12PR02, found on pages 78047–78049.

''NOTICE''—The date for submission of applications has been extended to 2 p.m. EDT on Thursday, March 15, 2012. Curriculum delivery to the National Institute of Corrections (NIC) will be no later than July 1, 2012. The applicant will be expected to deliver the training between October, 2012 and June, 2013. The training program will be announced on NIC's Web site in Fiscal Year 2013.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2012–155 Filed 1–9–12; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Methylene Chloride Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Methylene Chloride Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before February 9, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The methylene chloride (MC) standard requires employers to monitor employee exposure to MC, to provide medical consultation and examinations, to train employees about the hazards of MC in their working areas, and to establish and maintain records of employee exposure to MC. Employers, employees, physicians and the Government use these records to ensure that employees are not being harmed by exposure to MC.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0179. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 9, 2011 (76 FR 55949).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate

consideration, comments should reference OMB Control Number 1218–0179. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title of Collection: Methylene Chloride Standard.

OMB Control Number: 1218–0179.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 90,596.

Total Estimated Number of Responses: 250,924.

Total Estimated Annual Burden Hours: 63,560.

Total Estimated Annual Other Costs Burden: $19,214,570.

Dated: January 5, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–211 Filed 1–9–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Request to be Selected as Payee (CM–910). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 12, 2012.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, Email *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901, provides for the payment of benefits by the Department of Labor (DOL) to miners who are totally disabled due to pneumoconiosis and to certain survivors of the miner. If a beneficiary is incapable of handling his or her affairs, the person or institution responsible for their care is required to apply to receive the benefit payments on the beneficiary's behalf. The CM–910 is the form completed by the representative payee applicants. The payee applicant completes the form and mails it for evaluation to the district office that has jurisdiction over the beneficiary's claim file. Regulations 20 CFR 725.505–513 require the collection of this information. This information collection is currently approved for use through March 31, 2012.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to evaluate an applicant ability to be a representative payee. If the Program were not able to screen representative payee applicants the beneficiary's best interest would not be served.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Request to be Selected as Payee.

OMB Number: 1240–0010.

Agency Number: CM–910.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institutions.

Total Respondents: 2,300.

Total Annual Responses: 2,300.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 575.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,104.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 3, 2012.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2012–174 Filed 1–9–12; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL TRANSPORTATION SAFETY BOARD

Air Show and Air Races; Public Hearing

TIME AND DATE: 9 a.m., Tuesday, January 10, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

The objectives of this hearing is to examine current regulations and oversight practices for air shows and air races, describe procedures used for planning aviation events, and describe procedures used in conducting aviation events.

News Media Contact: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, January 6, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Williams at (202) 314–6100.

Dated: January 4, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–204 Filed 1–9–12; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0303]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 15, 2011 to December 28, 2011. The last biweekly notice was published on December 27, 2011 (76 FR 80972).

Addresses: Please include Docket ID NRC–2011–0303 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0303. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0303.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that

the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20874. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is

considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E–Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 22, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.9.1.6, ''Core Operating Limits Report,'' to add plant-specific methodology, ANP–3011 (P), ''Harris Nuclear Plant Unit 1 Realistic Large Break LOCA [Loss-of-Coolant Accident] Analysis,'' Revision 1, that implements AREVA's NRC-approved topical report, EMF–2103(P)(A), ''Realistic Large Break LOCA Methodology for Pressurized Water Reactors,'' and add EMF–2103(P)(A), ''Realistic Large Break LOCA Methodology for Pressurized Water Reactors,'' Revision 2 or higher upon approval of the specific revision by the NRC, to the TS 6.9.1.6.2 listing of analytical methods used to determine the core operating limits, and eliminates extraneous detail in TS 6.9.1.6 that cross references each method to the applicable TS Section 3.0 specifications and parameters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The TR [topical report] underlying the proposed HNP [Shearon Harris Nuclear Power Plant] methodology has been reviewed and approved by the NRC for use in determining core operating limits and for evaluation of LBLOCA [large break loss-of-coolant accident]. The core operating limits to be developed using the new methodologies for HNP will be established in accordance with the applicable limitations as documented in the NRC SE [safety evaluation]. In the April 9, 2003, NRC SE, the NRC concluded that the S–RELAP5 RLBLOCA [realistic large break loss-of-coolant accident] methodology is acceptable for referencing in licensing applications in accordance with the stated limitations.

The proposed change enables the use of new methodology to re-analyze a LBLOCA. It does not, by itself, impact the current design bases. Revised analysis may either result in continued conformance with design bases or may change the design bases. If design basis changes result from a revised analysis, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59.

The proposed change does not involve physical changes to any plant structure, system, or component (SSC). Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fission product barriers during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated.

The proposed methodologies will ensure that the plant continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are impacted and there are no adverse effects on the factors that contribute to offsite or onsite dose as a result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant SSCs are maintained consistent with the safety analysis and licensing bases.

Therefore, this amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant SSCs. No new or different equipment is being installed and no installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no impact on any margin of safety resulting from the incorporation of this new TR into the TS or deletion of cross-reference information from the description of the COLR [core operating limit report]. If design basis changes result from a revised analysis that uses these new methodologies, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59. Any potential reduction in the margin of safety would be evaluated for that specific design change.

Therefore, this amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 28, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.2.B to increase the condensate storage tank low water level setpoint for the interlock to high-pressure coolant injection (HPCI) pump suction valves. The proposed amendment would also correct typographical errors in TS numbering and referencing that were introduced in previous license amendment requests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The increasing of the setpoint for the Condensate Storage Tank (CST) low water level High Pressure Coolant Injection (HPCI) System automatic suction transfer to the Suppression Pool is not a precursor to any accident previously evaluated. The CST is not utilized to mitigate the consequences of any accident previously evaluated. The increase in the setpoint provides for HPCI pump performance with the required flow to mitigate the accident conditions. The proposed corrections to typographical errors incurred in the prior License Amendments provide correct references to the applicable existing Specifications, which is an administrative change.

The proposed changes do not involve a change to the safety function of the HPCI system operation. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The increasing of the setpoint for the Condensate Storage Tank (CST) low water level High Pressure Coolant Injection (HPCI) System automatic suction transfer to the Suppression Pool is not a precursor to any accident previously evaluated. The CST is not utilized to mitigate the consequences of any accident previously evaluated. The increase in the setpoint provides for HPCI pump performance with the required flow to mitigate the accident conditions. The proposed corrections to typographical errors incurred in the prior License Amendments provide correct references to the applicable existing Specifications, which is an administrative change.

The proposed changes do not change the safety function of the HPCI and RCIC [reactor core isolation cooling] systems. There is no alteration to the parameters within which the plant is normally operated. The increase in the setpoint is not a precursor to new or different kinds of accidents and do not initiate new or different kinds of accidents. The impact of these changes have been analyzed and found to be acceptable within the design limits and plant operating procedures. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event and design basis accidents. The proposed change increases the setpoint at which protective actions are initiated, but does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. The corrections to the typographical errors introduced in prior License Amendments do not impact the safety margin.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of amendment request: October 26, 2011.

Description of amendment request: The proposed amendment revises license condition 2.C.(32) to require the installation of NETCO–SNAP–IN® inserts to be completed no later than December 31, 2012, for LaSalle County Station (LSCS) Unit 2. In addition, license condition 2.C.(31) is revised to apply until March 31, 2012, and a new license condition 2.C.(34) is being

proposed to prohibit fuel storage after March 31, 2012, in spent fuel pool (SFP) storage rack cells that have not been upgraded with the NETCO–SNAP–IN® inserts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the LSCS Unit 2 Operating License to accelerate the timeline for installation of the NETCO–SNAP–IN® inserts in the LSCS Unit 2 SFP, and limit the time period under which BORAFLEX™ is credited as the neutron absorbing material in the Unit 2 SFP. There are no changes to the SFP criticality analysis associated with the proposed change. The SFP criticality analysis was previously approved by the NRC and continues to demonstrate that the effective neutron multiplication factor, Keff, is less than or equal to 0.95 if the SFP is fully flooded with unborated water. No physical changes to the plant are proposed, no new plant equipment is being installed, and there are no changes to the manner in which the plant is operated. Rather, the proposed change is administrative because it involves accelerating the timeline for installing the NETCO–SNAP–IN® inserts and limiting the time period under which BORAFLEX™ is credited as the neutron absorbing material in the Unit 2 SFP.

The probability that a fuel assembly would be dropped is unchanged by the proposed change. These events involve failures of administrative controls, human performance, and equipment failures that are unaffected by the proposed change. The proposed change does not result in a significant increase in the consequence of an accident previously analyzed. The criticality analysis that demonstrates adequate margin to criticality for spent fuel storage rack cells with rack inserts in the LSCS Unit 2 SFP, and adequate criticality margin for assemblies accidentally dropped onto the spent fuel storage racks, is not being changed. The consequences of dropping a fuel assembly onto any other fuel assembly or other structure are unaffected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the LSCS Unit 2 Operating License to accelerate the timeline for installation of the NETCO–SNAP–IN® inserts in the LSCS Unit 2 SFP, and limit the time period under which BORAFLEX™ is credited as the neutron absorbing material in the Unit 2 SFP. There are no changes to the SFP criticality analysis associated with the proposed change. No physical changes to the plant are proposed, and there are no changes to the manner in which the plant is operated. Rather, the proposed change is administrative because it involves accelerating the timeline for installing the NETCO–SNAP–IN® inserts and limiting the time period under which BORAFLEX™ is credited as the neutron absorbing material in the Unit 2 SFP.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the LSCS Unit 2 Operating License to accelerate the timeline for installation of the NETCO–SNAP–IN® inserts in the LSCS Unit 2 SFP, and limit the time period under which BORAFLEX™ is credited as the neutron absorbing material in the Unit 2 SFP. Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in Technical Specifications. The proposed change does not alter these established safety margins. For SFP criticality, the required safety margin is 5% including a conservative margin to account for engineering and manufacturing uncertainties. The proposed change does not alter the criticality analysis for the SFP and does not affect the SFP criticality safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Jacob I. Zimmerman.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Units 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: May 27, 2011.

Description of amendment request: The proposed amendment would modify Technical Specifications (TSs) to allow the BVPS–1 containment spray additive, sodium hydroxide (NaOH), to be replaced by sodium tetraborate (NaTB). Also, an administrative change to the BVPS–2 license is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Use of NaTB in lieu of NaOH would not involve a significant increase in probability of a previously evaluated accident because the containment spray additive is not an initiator of any analyzed accident. The NaTB would be stored and delivered by a passive method that does not have potential to affect plant operations. Any existing NaOH delivery system equipment which remains in place but is removed from service would meet existing seismic and electrical requirements. Therefore the change in additive, including removal of NaOH equipment from service, would not result in any failure modes that could initiate an accident.

The spray additive is used to mitigate the consequences of a LOCA [loss-of-coolant accident]. Use of NaTB as an additive in lieu of NaOH would not involve a significant increase in the consequences of a previously evaluated accident because the amount of NaTB specified in the proposed TS would achieve a pH of 7 or greater, consistent with the current licensing basis. This pH is sufficient to achieve long-term retention of iodine by the containment sump fluid for the purpose of reducing accident related radiation dose following a LOCA.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Regarding the proposed use of NaTB in lieu of NaOH, the NaTB would be stored and delivered by a passive method that does not have potential to affect plant operations. Any existing NaOH delivery system equipment that is removed from service would meet existing seismic and electrical requirements. Hydrogen generation would not be significantly impacted by the change.

Therefore, no new failure mechanisms, malfunctions, or accident initiators would be introduced by the proposed change, and it would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the quantity of NaTB specified in the amended TS would reduce the potential for undesirable chemical effects while achieving radiation dose reductions, corrosion control and hydrogen generation effects that are comparable to NaOH, the proposed change does not involve a significant reduction in a margin of safety. The primary function of an additive is to reduce LOCA consequences by

controlling the amount of iodine fission products released to containment atmosphere from reactor coolant accumulating in the sump during a LOCA. Because the amended [TS] would achieve a pH of 7 or greater using NaTB, dose related safety margins would not be significantly reduced. Use of NaTB reduces the potential for undesirable chemical effects that could interfere with recirculation flow through the sump strainers. Any existing NaOH delivery system equipment that remains in place but is removed from service would meet existing seismic and electrical requirements and would not interfere with operation of the existing containment or containment spray system.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Nancy L. Salgado.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: November 17, 2011.

Description of amendment request: The proposed change would revise the applicability of the figures in the Technical Specifications for the reactor coolant system (RCS) pressure-temperature limits and the cold overpressure protection setpoints. The proposed change revises the applicability of the figures from 20 effective full-power years (EFPY) to 23.7 EFPY.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed change neither adversely affects accident initiators or precursors, nor alters design assumptions. The proposed change does not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. The change does not affect the integrity of the RCS pressure boundary. The proposed change to the applicability of the RCS pressure-temperature limits and the cold overpressure protection setpoints continues to protect the integrity of the RCS pressure boundary.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change, which revises the applicability of the RCS pressure-temperature limits and the cold overpressure protection setpoints, will not impact the accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a significant change in the method of plant operation, or new operator actions. The proposed change will not introduce failure modes that could result in a new accident. The RCS pressure-temperature limits and the cold overpressure protection setpoints are not accident initiators. The change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change does not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. The proposed change to the applicability of the RCS pressure-temperature limits and the cold overpressure protection setpoints continues to protect the integrity of the RCS pressure boundary.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: March 31, 2011, as supplemented by letter dated August 12, 2011.

Brief description of amendment: The amendments relocated certain surveillance frequencies to a licensee-controlled program (the Surveillance Frequency Control Program) in accordance with Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF (Risk Informed Technical Specification Task Force) Initiative 5b.'' The amendments also approved two deviations from TSTF–425, Revision 3: an administrative change which would allow it to retain a definition that also appears in a portion of the plants' technical specifications that are not subject to TSTF–425, and TS Bases changes recommended by the NRC to the TSTF in a letter dated April 14, 2010.

Date of issuance: December 15, 2011.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: Unit 1—188; Unit 2—188; Unit 3—188.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: June 14, 2011 (76 FR 34765). The supplemental letter dated August 12, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 2011.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 12, 2011.

Brief Description of amendments: The license amendments revised Brunswick Steam and Electric Plant, Units 1 and 2 Technical Specification (TS) 3.4.5, ''RCS Leakage Detection Instrumentation,'' consistent with the NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–514, ''Revise BWR [Boiling Water Reactor] Operability Requirements and Actions for RCS [Reactor Coolant System] Leakage Instrumentation,'' Revision 3. The availability of this TS improvement was announced in the **Federal Register** on December 17, 2010 (75 FR 79048) as part of the consolidated line item improvement process.

Date of issuance: December 21, 2011.

Effective date: Date of issuance, shall be implemented within 60 days of the effective date.

Amendment Nos.: Unit 1—260 and Unit 2—288.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** September 6, 2011 (76 FR 55127).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated December 21, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: April 6, 2011.

Brief description of amendment: The amendments modify the actions to be taken when the containment atmosphere gaseous radioactivity monitoring system and the primary containment pressure and temperature monitoring system are the only operable reactor coolant leakage detection monitoring systems. The modified actions require additional, more frequent monitoring of other indications of Reactor Coolant System (RCS) leakage and provide appropriate time to restore another monitoring system to operable status. This change is consistent with the U.S. Nuclear Regulatory Commission-approved safety evaluation on Technical Specification Task Force (TSTF) Traveler, TSTF–514–A, Revision 3, ''Revised [Boiling Water Reactor] BWR Operability Requirements and Actions for RCS Leakage Instrumentation,'' dated November 24, 2010.

Date of issuance: December 19, 2011.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 205 and 167.

Facility Operating License Nos. NPF–39 and NPF–85. These amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register:*** August 9, 2011 (76 FR 48911).

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated December 19, 2011.

No significant hazards consideration comments received: No.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 20, 2010, as supplemented by letters dated July 20, September 1, and October 5, 2011. The July 20, 2011, submittal entirely replaced the licensee's submittal dated December 20, 2010.

Brief description of amendment: Florida Power Corporation (the licensee) will be constructing and operating an onsite independent spent fuel storage installation, under its general license, in order to maintain full-core offload capacity in the spent fuel pools located in the CR–3 auxiliary building (AB). In support of future dry shielded canister/transfer cask loading operation, the licensee is replacing the AB overhead crane. This amendment approved departure from a method for evaluating the replaced AB overhead crane, revisions to the CR–3 Final Safety Analysis Report (FSAR), and changes to the associated commitments in the FSAR.

Date of issuance: December 27, 2011.

Effective date: Date of issuance, to be implemented within 180 days. The FSAR changes shall be implemented in the next periodic update made in accordance with 10 CFR 50.71(e).

Amendment No.: 239.

Facility Operating License No. DPR–72: Amendment approved revisions to the FSAR Sections 5.1.1.1.h, 9.6.1.5.a.5, and 9.6.3.1 as indicated in the NRC's safety evaluation dated December 27, 2011.

Date of initial notice in ***Federal Register:*** September 6, 2011 (76 FR 55129). The supplements dated September 1 and October 5, 2011,

provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of application for amendment: May 27, 2009, as supplemented on August 28, 2009, December 23, 2009, February 19, 2010, April 16, 2010, May 7, 2010, June 3, 2010, June 30, 2010, July 9, 2010, July 30, 2010, September 16, 2010, October 8, 2010, October 28, 2010, November 5, 2010, December 10, 2010, December 13, 2010, January 19, 2011, January 31, 2011, February 4, 2011, March 23, 2011, May 9, 2011, June 13, 2011, July 15, 2011, August 5, 2011, August 19, 2011, September 23, 2011, October 27, 2011, and November 1, 2011.

Brief description of amendment: The amendment changes the NMP2 Technical Specifications to increase the maximum steady-state reactor core power level from 3,467 megawatts thermal (MWt) to 3,988 MWt, which is an increase from the current license of approximately 15 percent. The proposed increase in power level is considered an extended power uprate.

Date of issuance: December 22, 2011.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 140.

Renewed Facility Operating License No. NPF–69: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register:*** October 10, 2009 (74 FR 53778). The supplemental letters dated August 28, 2009, December 23, 2009, February 19, 2010, April 16, 2010, May 7, 2010, June 3, 2010, June 30, 2010, July 9, 2010, July 30, 2010, September 16, 2010, October 8, 2010, October 28, 2010, November 5, 2010, December 10, 2010, December 13, 2010, January 19, 2011, January 31, 2011, February 4, 2011, March 23, 2011, May 9, 2011, June 13, 2011, July 15, 2011, August 5, 2011, August 19, 2011, September 23, 2011, October 27, 2011, and November 1, 2011, provided additional information that clarified the application and did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of December 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–124 Filed 1–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of January 9, 16, 23, 30, February 6, 13, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 9, 2012

Wednesday, January 11, 2012

10 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6)

1 p.m. Briefing on Proposed Rule to Revise the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Part 51) (Public Meeting) (Contact: Jeremy Susco, (301) 415–2927)

This meeting will be webcast live at the Web address: *www.nrc.gov.*

Week of January 16, 2012—Tentative

There are no meetings scheduled for the week of January 16, 2012.

Week of January 23, 2012—Tentative

There are no meetings scheduled for the week of January 23, 2012.

Week of January 30, 2012—Tentative

There are no meetings scheduled for the week of January 30, 2012.

Week of February 6, 2012—Tentative

Thursday, February 9, 2012

9 a.m. Briefing on Status of Outreach and Educational Efforts with External Stakeholders Related to the Safety Culture Policy Statement (Public Meeting) (Contact: Diane Sieracki, (301) 415–3297)

This meeting will be webcast live at the Web address: *www.nrc.gov.*

Week of February 13, 2012—Tentative

There are no meetings scheduled for the week of February 13, 2012.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: January 5, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–337 Filed 1–6–12; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2011; Order No. 1095]

FY 2010 Annual Compliance Report; Comment Request

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2011. Within 90 days, the Commission must evaluate that information and issue its determination

as to whether rates were in compliance with title 39, chapter 36 and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* February 3, 2012.

Reply comments are due: February 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or (202) 789–6820.

SUPPLEMENTARY INFORMATION:

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On December 29, 2011, the United States Postal Service (Postal Service) filed with the Commission, pursuant to 39 U.S.C. 3652, its Annual Compliance Report (ACR) for fiscal year (FY) 2011.[1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2011 Comprehensive Statement, its FY 2011 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See, respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23. In line with past practice, some of the material in the FY 2011 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2011 are in compliance with applicable title 39 requirements.

[1] United States Postal Service FY 2011 Annual Compliance Report, December 29, 2011 (FY 2011 ACR). Public portions of the Postal Service's filing are available at the Commission's Web site, *http://www.prc.gov.*

II. Overview of the Postal Service's FY 2011 ACR

Contents of the filing. The Postal Service's FY 2011 ACR consists of a 72-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with a supporting rationale filed as Attachment Two. The filing also includes the Comprehensive Statement, Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission, and some also has been filed in hard-copy form.

Scope of filing. The material appended to the narrative consists of (1) domestic product costing material filed on an annual basis, summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material, summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. *Id.* at 2. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.* at 3.

''Roadmap'' document. A roadmap to the FY 2011 ACR appears in the form of library reference USPS–FY11–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; a list of special studies; and, as required by Commission rule 3050.2, a discussion of obsolescence. *Id.* at 3–4.

Methodology. The Postal Service says the scope of new methodologies has been minimized because it has placed heavy reliance on replicating the methodologies used most recently by the Commission. However, it observes that postal operations and data collection are not entirely static, so there are some minor changes. These are identified and discussed in a separate section of the roadmap document and in the prefaces to each of the appended materials. *Id.* at 5.

Proposals for which the Postal Service has filed to change analytical principles since the filing of the FY 2010 ACR are identified and summarized in a table. *Id.* at 4–6. Generally, with respect to proposed changes that were pending resolution as of the date of the filing, the Postal Service prepared two versions of the materials for its ACR. *Id.* at 6.[2]

Market dominant product-by-product costs, revenues, and volumes. With one exception, costs, revenues, and volumes for all market dominant products of general applicability are shown directly in the FY 2011 CRA or ICRA. The one exception is International Reply Coupon Service. *Id.* at 8.

Market dominant negotiated service agreements. The FY 2011 ACR presents information on market dominant negotiated service agreements (NSAs) in two ways. *Id.* at 9. First, on a fiscal year basis, it extracts revenue, cost, and volume data from the relevant CRA lines. These data are further disaggregated by individual NSA in library reference USPS–FY11–30. Second, library reference USPS–FY11–30 also presents similar data for the NSAs by contract year. *Id.* This latter method is required by 39 CFR 3020.21(1) to allow net benefit calculations for NSAs that have discounts based on volume thresholds reached during a contract year. *Id.* Such net benefit calculations also appear in library reference USPS–FY11–30.[3]

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2011. Responsive information appears in library reference USPS–FY11–29. *Id.* at 10–11. The Postal Service says it set aggressive on-time targets of 90 percent or above for all market dominant products and, overall, has been successful in continuously improving these scores. It asserts that its targets have already been met or exceeded for some products and in some districts, but says there are several instances where target scores have not yet been met at the national level. Specific reasons for these results are discussed in library reference USPS–FY11–29. *Id.* at 12.

Customer satisfaction. The FY 2011 ACR discusses the Postal Service's new approach for measuring customer experience and satisfaction; describes the new methodology and other

[2] The three exceptions to this practice are with respect to Proposals Ten, Eleven, and Eighteen. *Id.* at 6–7. The Postal Service also identifies the reasons why it did not prepare two versions for these proposals in its ACR and requests that the Commission waive the requirements of 39 CFR 3050.10 with respect to these three proposals. *Id.* at 7.

[3] The Postal Service notes that there is a distinction between the ''net benefit calculations'' and the data reported in the CRA line item for NSAs. The net benefit calculations are intended to isolate the incremental benefit of the NSA while the CRA reports the entire volume to the NSA, regardless of whether it is deemed ''incremental.'' *Id.* at 9.

changes; presents a table with survey results; and compares the results from FY 2010 to FY 2011. *Id.* at 10–13.

Product analysis and other information. The FY 2011 ACR includes a detailed analysis of each market dominant product, including domestic NSAs in effect during FY 2011. *Id.* at 14–48. It also presents information responsive to 39 U.S.C. 3652(b) on worksharing discounts. *Id.* at 50–60.

Competitive products. The FY 2011 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2011 CRA (or ICRA). For competitive products not of general applicability, data are provided in non-public library references USPS–FY11–NP2 and USPS–FY11–NP27. The FY 2011 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 60–64.

Market tests; nonpostal services. The Postal Service also addresses the three market dominant market tests conducted during FY 2011, the two competitive market tests conducted during FY 2011, and nonpostal services. *Id.* at 64–68. With respect to the latter, it notes that in the last ACD, the Commission linked further reporting on nonpostal services to the approval of classification language in Docket No. MC2010–24, and that docket was still pending as of the end of FY 2011. The Postal Service states that it has attempted to improve its nonpostal services reporting in this ACR, but it considers the information it is providing as generally comparable to what it previously provided. *Id.* at 67.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint a Public Representative to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2011 ACR and on whether any rates or fees in effect during FY 2011 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 (or regulations promulgated thereunder). Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to in 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; progress toward goals established in the annual Comprehensive Statement; and such other matters that may be relevant to the Commission's review. Comments on these topics will, *inter alia,* assist the Commission in developing appropriate recommendations to the Postal Service related to the protection or promotion of the public policy objectives of title 39.

Access to filing. The Commission has posted the publicly available portions of the FY 2011 ACR on its Web site, *http://www.prc.doc.*

Comment deadlines. Comments by interested persons are due on or before February 3, 2012. Reply comments are due on or before February 17, 2012. The Commission, upon completion of its review of the FY 2011 ACR, public comments, and other data and information submitted in this proceeding, will issue its ACD. Those needing assistance filing electronically may contact the Docket Section supervisor at (202) 789–6846 or via email at *PRC–DOCKETS@prc.gov.* Inquiries about access to non-public materials should also be directed to the Docket Section.

Public representative. Kenneth E. Richardson is designated to serve as the Public Representative to represent the interests of the general public in this proceeding, assisted by Lawrence Fenster and Elena Patel. Neither the Public Representative nor any additional persons assigned to assist him shall participate in or advise as to any Commission decision in this proceeding other than in their designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2011 to consider matters raised by the United States Postal Service's FY 2011 Annual Compliance Report.

2. Pursuant to 35 U.S.C. 505, the Commission appoints Kenneth E. Richardson as officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

3. Comments on the United States Postal Service's FY 2011 Annual Compliance Report to the Commission, including the Comprehensive Statement of Postal Operations and other reports, are due on or before February 3, 2012.

4. Reply comments are due on or before February 17, 2012.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–164 Filed 1–9–12; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting Notice

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 18, 2012, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. (312) 751–4920.

Dated: January 4, 2012.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2012–299 Filed 1–6–12; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 12, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 12, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 5, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–304 Filed 1–6–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66096; File No. SR–FINRA–2011–044]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA's Code of Procedure

January 4, 2012.

I. Introduction

On November 8, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to FINRA's Code of Procedure (''Code''). The proposed rule change was published for comment in the **Federal Register** on November 23, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA's Code contains detailed provisions for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. As described further below, FINRA is proposing a number of changes to its Code. According to FINRA, the changes are procedural in nature and will not affect any party's substantive rights.

Service of Complaint

Currently, FINRA Rule 9131(a) requires a complaint to be served on each party by the Department of Enforcement or the Department of Market Regulation. The rule does not explicitly permit FINRA staff to serve the complaint on a party's counsel. The proposed rule change would amend FINRA Rule 9131(a) to clarify that only the Department of Enforcement or the Department of Market Regulation can serve a complaint and to allow for service on counsel or another person authorized to represent others when the representative agrees to accept service of the complaint on behalf of the respondent. The proposed rule change also would amend FINRA Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b) and 9556(b) to allow for service on counsel or another person authorized to represent others when the representative agrees to accept service of a notice.

FINRA Rule 9131(a) also provides that a party initiating a proceeding shall serve a document initiating a proceeding on the other party. The proposed rule change deletes this provision because, according to FINRA, it has been superseded by other FINRA rules and no longer plays a role in expedited proceedings. Further, the Code no longer allows a party other than FINRA to initiate a proceeding.

Filing of Papers With Adjudicator

FINRA Rule 9135(a) prescribes the timing for the filing of papers with an adjudicator. Currently, complaints are deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers required to be filed are deemed timely if, on the day the papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail or sent by courier to FINRA. In recognition of the increased use of electronic mail, the proposed rule change would allow the use of electronic mail as another delivery method for complaints and other papers required to be filed with an adjudicator.

FINRA Rule 9136 establishes the form for papers filed in connection with a disciplinary proceeding or a review of a disciplinary proceeding. The proposed change to FINRA Rule 9136 would require single-spaced footnotes, as well as decrease the number of copies required to be filed with the adjudicator from three to one, unless otherwise ordered. The proposed rule change also would amend FINRA Rule 9313 by giving counsel to the National Adjudicatory Council (''NAC'') the authority to set the number of copies of all papers to be filed with the NAC.

Motion To Withdraw by Attorney

FINRA Rule 9142 requires an attorney for a party (or person authorized to represent others) who is seeking to withdraw to give notice setting forth good cause for the withdrawal at least 30 days prior to withdrawal, unless circumstances do not permit. According to FINRA, there have been occasions when an attorney, believing that his withdrawal was effective upon filing with FINRA, did not provide any contact information for the party the attorney no longer represents. The proposed rule change would require an attorney (or person authorized to represent others) seeking to withdraw his appearance to file a motion setting forth good cause for the withdrawal, as well as contact information for the party the attorney will no longer represent.

Subjects Discussed at Pre-Hearing Conference

FINRA Rule 9241(c) delineates the subjects that the Hearing Officer, in a pre-hearing conference, may consider and act upon. The proposed rule change would amend FINRA Rule 9241 by adding a permissive subject for a pre-hearing conference: Designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for the testimony.

Fees for Copying Costs During Discovery

FINRA Rule 9251(f) allows a respondent to obtain a photocopy of all documents made available for inspection by the Department of Enforcement or the Department of Market Regulation at a rate established by the Board of FINRA or FINRA Regulation. The proposed rule change would transfer the authority to establish the rate for copies to FINRA staff.[4]

Submission of Evidence

FINRA Rule 9261(a) addresses pre-hearing disclosures and requires each party to submit to all other parties and to the Hearing Officer copies of documentary exhibits the parties intend to introduce and the names of the witnesses each party intends to present at a hearing. Currently, pre-hearing, proposed documentary evidence submitted to the Hearing Officer becomes part of the record. At the hearing, all of the documents that are admitted into evidence also become part

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65787 (November 18, 2011), 76 FR 72463 (''Notice'').

[4] FINRA stated in its filing that copying costs would be based on rates charged by local copying vendors in the area where FINRA maintains the documents. *Id.*

of the record.[5] According to FINRA, this results in the record containing a duplicate of nearly every document that was admitted into evidence.

The proposed rule change would amend FINRA Rule 9261(a) to establish that documentary evidence submitted prior to a hearing shall not become part of the record, unless ordered by a Hearing Officer, Hearing Panel, or Extended Hearing Panel. Furthermore, the Hearing Officer may order each party—who will continue to exchange proposed documentary evidence with other parties—to refrain from submitting its proposed documentary evidence to the Hearing Officer.

Hearing Panel and NAC Decisions

FINRA Rules 9268(b)(1) and 9349(b)(1) require that a statement describing the investigative or other origin of the disciplinary proceeding be included in the contents of a decision of the Hearing Panel or the NAC, respectively. The proposed rule change would amend this provision to require such a statement only if it is not otherwise contained in the record.

Review Proceedings

FINRA Rule 9312(a)(2) requires that if a default decision issued pursuant to FINRA Rule 9269 is called for review by the General Counsel within 25 days after the date of service of the decision, the decision must be reviewed by the NAC. The proposed rule change would provide that the Review Subcommittee also may review the decision.

Oral Argument in Review of Proceedings

FINRA Rule 9341(a) establishes the procedure for a party requesting an oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Currently, once oral argument is requested, there is no mechanism to cancel oral argument if a respondent abandons his or her request for oral argument subsequent to filing a brief but prior to the date set for oral argument. The proposed rule change would allow the Subcommittee or, if applicable, the Extended Proceeding Committee, to cancel in writing a previously scheduled oral argument, and decide the matter based on the briefs and the record without oral argument, if the adjudicator finds good cause due to a respondent abandoning his or her prior request, or similar unreasonable lack of availability.[6] If the adjudicator cancels an oral argument but a respondent believes this action was taken in error, a respondent may file a motion seeking to reschedule oral argument.

Failure To Participate in Disciplinary Proceeding

FINRA Rule 9344(a) gives the NAC or the Review Subcommittee discretion on how to proceed when an appealing party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel. The proposed rule change would specify that the NAC or the Review Subcommittee will remand the disciplinary proceeding with instructions when a party shows good cause for failing to participate below. If, on the other hand, a party does not show good cause, the Subcommittee or other adjudicator will decide the case based on the briefs and the record and without oral argument.

Filing of Papers in Eligibility Proceedings

FINRA Rule 9524(a)(5) gives a Hearing Panel in an eligibility proceeding the ability, after obtaining the consent of all the parties, to extend or shorten any time limits prescribed by the Code for the filing of any papers. The proposed rule change would remove the consent requirement for any extension of the time limits.

Procedural Motions in Eligibility or Expedited Proceedings

FINRA Rule 9146(j)(3) requires that in the FINRA Rule 9500 Series, a motion shall be decided by an adjudicator. The proposed rule change would allow Counsel to the NAC to decide a procedural motion made pursuant to an eligibility proceeding or an expedited proceeding. Counsel would not be authorized to rule on dispositive motions.

Additional Information

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval. Once effective, the proposed rules would apply immediately to all new and pending matters governed by the Code.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[7] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(8) of the Act,[9] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members, as the changes should make for a more efficient process under the Code while still preserving the substantive rights of the parties.

The Commission believes that allowing Hearing Officers to manage the parties' pre-hearing submissions to reduce and eliminate duplicative filings, as well as designating relevant portions of transcripts, should make the process more efficient for all of the parties involved. The proposed rule change should eliminate the unnecessary duplication of pre-hearing exhibits and the introduction of voluminous testimonial transcripts into evidence because the Hearing Officer at the pre-hearing conference may designate the relevant portions of such documents. Further, the proposed rule change should allow for a faster, more efficient review process by allowing the Review Subcommittee, in addition to the NAC, to review certain default decisions; delegating certain procedural and technical decisions to the counsel to the NAC; giving Hearing Panels and the NAC additional flexibility as to required statements in decisions; and allowing a Hearing Panel in an eligibility proceeding to extend time limits for the filing of any papers without the consent of all the parties.

The Commission also believes that it is appropriate to allow the Subcommittee or Extended Proceeding Committee to cancel a previously scheduled oral argument when it can be shown that the party requesting the oral argument has abandoned his prior request or for similar unreasonable lack of availability. The Commission notes that a respondent may file a motion seeking to reschedule an oral argument that he believes was cancelled in error. The Commission believes that this should allow FINRA to avoid unnecessary travel expenses, while still

[5] *See* FINRA Rule 9267(a)(3).

[6] According to FINRA, a respondent may be viewed as abandoning a previously scheduled oral argument if the adjudicator has not received a response after attempting to confirm the attendance of the respondent. *See* Notice *supra* note 3.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(8).

preserving the right of the party to an oral argument in the event the original oral argument was cancelled in error.

The Commission also notes that several of the changes would make it easier for the parties to satisfy the procedural requirements under the Code by allowing them to file papers electronically, authorizing their attorney or representative to accept service of a complaint and notices of certain expedited proceedings, and decreasing the number of copies required to be filed with an adjudicator. Moreover, the Commission believes that FINRA's proposed change requiring an attorney or representative to file a motion to withdraw, along with the contact information of the party no longer being represented, should help to ensure fair procedures by reducing any uncertainty as to whether a party is represented by an attorney and ensuring that FINRA has all necessary information to contact the party.

Further, the Commission believes that the change to require the NAC or Review Subcommittee to remand a disciplinary proceeding, if the respondent has shown good cause for his failure to participate, is appropriate. Finally, the Commission believes that it is appropriate for FINRA staff to set the rate for copies.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2011–044) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–183 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66098; File No. SR–NYSEArca–2011–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Teucrium Agriculture Fund Under NYSE Arca Equities Rule 8.200

January 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 20, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Teucrium Agriculture Fund under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (''TIRs'') either by listing or pursuant to unlisted trading privileges (''UTP'').[3] The Exchange proposes to list and trade shares (''Shares'') of the Teucrium Agriculture Fund (''Fund'') pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of TIRs on the American Stock Exchange LLC,[4] trading on NYSE Arca pursuant to UTP,[5] and listing on NYSE Arca.[6] Among these are the Teucrium Corn Fund, Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund, each a series of the Teucrium Commodity Trust (''Trust'').[7] In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.[8]

The Shares represent beneficial ownership interests in the Fund, as described in the Registration Statement for the Fund.[9] The Fund is a commodity pool that is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by Teucrium Trading, LLC (''Sponsor''). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator (''CPO'') with the U.S. Commodity Futures Trading Commission (''CFTC'') and is a member

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] *See, e.g.,* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39).

[5] *See, e.g.,* Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73).

[6] *See, e.g.,* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91).

[7] *See* Securities Exchange Act Release Nos. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (order approving listing on the Exchange of Teucrium Corn Fund); 65344 (September 15, 2011), 76 FR 58549 (September 21, 2011) (SR–NYSEArca–2011–48) (order approving listing on the Exchange of the Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund).

[8] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing and trading of the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing and trading of the ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing and trading of the ETFS Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95) (order approving listing and trading on NYSE Arca of the ETFS Platinum Trust).

[9] *See* Amendment No. 1 to Form S–1 for Teucrium Commodity Trust, dated December 5, 2011 (File No. 333–173691) relating to the Fund (''Registration Statement''). The discussion herein relating to the Trust and the Shares is based, in part, on the Registration Statement. *See also* Amendment No. 4 to the Registration Statement on Form S–1 for Teucrium Commodity Trust, dated May 26, 2010 (File No. 333–162033) relating to the Teucrium Corn Fund; Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167591) relating to the Teucrium Wheat Fund; Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167590) relating to the Teucrium Soybean Fund; and Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167585) relating to the Teucrium Sugar Fund.

of the National Futures Association. The Bank of New York Mellon (''Custodian'' or ''Administrator'') is the custodian, transfer agent and administrator for the Fund. Foreside Fund Services, LLC (''Distributor'') is the distributor for the Fund's Shares.

Teucrium Agriculture Fund

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in percentage terms of the Shares' net asset value (''NAV'') reflect the daily changes in percentage terms of a weighted average (''Underlying Fund Average'') of the NAVs per share of four other commodity pools that are series of the Trust and are sponsored by the Sponsor: The Teucrium Corn Fund, the Teucrium Wheat Fund, the Teucrium Soybean Fund and the Teucrium Sugar Fund (collectively, ''Underlying Funds'').[10] The Fund seeks to achieve its investment objective by investing under normal market conditions [11] in the publicly-traded shares of each Underlying Fund so that the Underlying Fund Average will have a weighting of 25% for each Underlying Fund, and the Fund's assets will be rebalanced, generally on a daily basis, to maintain the approximate 25% allocation to each Underlying Fund. The Fund does not intend to invest directly in futures contracts (''Futures Contracts'') or other Commodity Interests (as defined below), although it reserves the right to do so in the future, including if an Underlying Fund ceases operations or if shares of an Underlying Fund cease trading on the Exchange.

According to the Registration Statement, the investment objective of each Underlying Fund is to have the daily changes in percentage terms of its shares' NAV reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for certain Futures Contracts for the commodity specified in the Underlying Fund's name. (This weighted average is referred to herein as the Underlying Fund's ''Benchmark,'' the Futures Contracts that at any given time make up an Underlying Fund's Benchmark are referred to herein as the Underlying Fund's ''Benchmark Component Futures Contracts,'' and the commodity specified in the Underlying Fund's name is referred to herein as its ''Specified Commodity''). Specifically, the Teucrium Corn Fund's Benchmark is: (1) The second-to-expire Futures Contract for corn traded on the Chicago Board of Trade (''CBOT''), weighted 35%, (2) the third-to-expire CBOT corn Futures Contract, weighted 30%, and (3) the CBOT corn Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Wheat Fund's Benchmark is: (1) The second-to-expire CBOT wheat Futures Contract, weighted 35%, (2) the third-to-expire CBOT wheat Futures Contract, weighted 30%, and (3) the CBOT wheat Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Soybean Fund's Benchmark is: (1) The second-to-expire CBOT soybean Futures Contract, weighted 35%, (2) the third-to-expire CBOT soybean Futures Contract, weighted 30%, and (3) the CBOT soybean Futures Contract expiring in the November following the expiration month of the third-to-expire contract, weighted 35%, except that CBOT soybean Futures Contracts expiring in August and September will not be part of the Teucrium Soybean Fund's Benchmark because of the less liquid market for these Futures Contracts. The Teucrium Sugar Fund's Benchmark is: (1) The second-to-expire Sugar No. 11 Futures Contract traded on ICE Futures U.S. (''ICE Futures''),[12] weighted 35%, (2) the third-to-expire ICE Futures Sugar No. 11 Futures Contract, weighted 30%, and (3) the ICE Futures Sugar No. 11 Futures Contract expiring in the March following the expiration month of the third-to-expire contract, weighted 35%.

Each Underlying Fund seeks to achieve its investment objective by investing under normal market conditions in Benchmark Component Futures Contracts or, in certain circumstances, in other Futures Contracts for its Specified Commodity. In addition, and to a limited extent, an Underlying Fund also may invest in exchange-traded options on Futures Contracts for its Specified Commodity and in swap agreements [13] based on its Specified Commodity that are cleared through a futures exchange or its affiliated provider of clearing services (''Cleared Swaps'') in furtherance of the Underlying Fund's investment objective. Once position limits or accountability levels on Futures Contracts on an Underlying Fund's Specified Commodity are reached, each Underlying Fund's intention is to invest first in Cleared Swaps based on its Specified Commodity to the extent practicable under the position limits or accountability levels applicable to such Cleared Swaps and appropriate in light of the liquidity in the market for such Cleared Swaps, and then in contracts and instruments such as cash-settled options on Futures Contracts and forward contracts, swaps other than Cleared Swaps, and other over-the-counter transactions that are based on the price of its Specified Commodity or Futures Contracts on its Specified Commodity (collectively, ''Other Commodity Interests,'' and, together with Futures Contracts and Cleared Swaps, ''Commodity Interests''). According to the Registration Statement, by utilizing certain or all of these investments, the Sponsor will endeavor to cause each Underlying Fund's performance to closely track that of its Benchmark.

The Underlying Funds seek to achieve their investment objectives primarily by investing in Commodity Interests such that daily changes in the Underlying Fund's NAV will be expected to closely track the changes in its Benchmark. Each Underlying Fund's positions in Commodity Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of its Benchmark. For example, several times a year (on the dates on which Futures Contracts on the Underlying Fund's Specified Commodity expire), a particular Futures Contract will no longer be a Benchmark Component Futures Contract, and the Underlying Fund's investments will have to be changed accordingly. In order that the Underlying Funds' trading does not cause unwanted market movements and to make it more difficult for third parties to profit by trading based on such expected market movements, the Underlying Funds' investments typically will not be rolled entirely on that day, but rather will typically be rolled over a period of several days.

[10] Additional information regarding the Underlying Funds is included in the proposed rule changes approved by the Commission for the Underlying Funds and in their corresponding registration statements. *See* notes 7 and 9, *supra*.

[11] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the commodity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[12] According to the Registration Statement, although sugar Futures Contracts are primarily traded on the ICE Futures, they may also be traded on the New York Mercantile Exchange (''NYMEX'').

[13] According to the Registration Statement, a cleared swap agreement is a standard contract to exchange a periodic stream of payments determined by reference to a notional amount, with one party's payments determined by reference to a specified price for an underlying asset or index, and the other's determined by reference to the current market price of that asset or index. Cleared swaps may be executed bilaterally or on an exchange or other trading platform, but must be accepted for clearing by a derivatives clearing organization.

Consistent with achieving each Underlying Fund's investment objective of closely tracking its Benchmark, the Sponsor may for certain reasons cause the Underlying Fund to enter into or hold Futures Contracts other than the Benchmark Component Futures Contracts, Cleared Swaps and/or Other Commodity Interests. For example, certain Cleared Swaps have standardized terms similar to, and are priced by reference to, a corresponding Benchmark Component Futures Contract. Additionally, Other Commodity Interests that do not have standardized terms and are not exchange-traded, referred to as ''over-the-counter'' Commodity Interests, can generally be structured as the parties to the Commodity Interest contract desire. Therefore, an Underlying Fund might enter into multiple Cleared Swaps and/or over-the-counter Commodity Interests related to its Specified Commodity that are intended to exactly replicate the performance of Benchmark Component Futures Contracts of the Underlying Fund, or a single over-the-counter Commodity Interest designed to replicate the performance of its Benchmark as a whole. Assuming that there is no default by a counterparty to an over-the-counter Commodity Interest, the performance of the Commodity Interest will necessarily correlate exactly with the performance of the Underlying Fund's Benchmark or the applicable Benchmark Component Futures Contract.[14] The Underlying Funds might also enter into or hold Commodity Interests other than Benchmark Component Futures Contracts to facilitate effective trading, consistent with the discussion of an Underlying Fund's ''roll'' strategy in the preceding paragraph. In addition, an Underlying Fund might enter into or hold Commodity Interests related to its Specified Commodity that would be expected to alleviate overall deviation between the Underlying Fund's performance and that of its Benchmark that may result from certain market and trading inefficiencies or other reasons. According to the Registration Statement, by utilizing certain or all of the investments described above, the Sponsor will endeavor to cause each Underlying Fund's performance to closely track that of its Benchmark.

While the Fund expects to maintain substantially all of its assets in shares of the Underlying Funds at all times, the Fund may hold some residual amount of assets in obligations of the United States government (''Treasury Securities'') or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). The Underlying Funds invest in Commodity Interests to the fullest extent possible without being leveraged[15] or unable to satisfy their expected current or potential margin or collateral obligations with respect to their investments in Commodity Interests. After fulfilling such margin and collateral requirements, the Underlying Funds will invest the remainder of the proceeds from the sale of baskets (as described below) in Treasury Securities or cash equivalents, and/or hold such assets in cash. Therefore, the focus of the Sponsor in managing the Underlying Funds is investing in Commodity Interests and in Treasury Securities, cash and/or cash equivalents. The Fund and Underlying Funds will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The Sponsor will endeavor to place the Fund's trades in the Underlying Funds and otherwise manage the Fund's investments so that the Fund's average daily tracking error against the Underlying Fund Average will be less than 10 percent over any period of 30 trading days. More specifically, the Sponsor will endeavor to manage the Fund so that A will be within plus/minus 10 percent of B, where A is the average daily change in the Fund's NAV for any period of 30 successive valuation days, *i.e.,* any trading day as of which the Fund calculates its NAV, and B is the average daily change in the Underlying Fund Average over the same period.[16]

According to the Registration Statement, the Sponsor employs a ''neutral'' investment strategy intended so that the Fund will track the changes in the Underlying Fund Average and each Underlying Fund will track the changes in its Benchmark regardless of whether the Underlying Fund Average or Benchmark goes up or down. According to the Registration Statement, the Fund's and Underlying Funds' ''neutral'' investment strategies are designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in the agricultural commodities market in a cost-effective manner. Such investors may include participants in agricultural industries and other industries seeking to hedge the risk of losses in their commodity-related transactions, as well as investors seeking exposure to the agricultural commodities market. The Sponsor does not intend to operate the Fund or an Underlying Fund in a fashion such that its per share NAV will equal, in dollar terms, the spot price of a unit of a Specified Commodity or the price of any particular Futures Contract.

According to the Registration Statement, the Fund and the Underlying Funds do not intend to limit the size of their offerings and will attempt to expose substantially all of their proceeds to the agricultural commodities market either directly through Commodity Interests or, in the case of the Fund, indirectly through the Underlying Funds. If an Underlying Fund encounters position limits or price fluctuation limits for Futures Contracts and/or Cleared Swaps on U.S. exchanges, it may then, if permitted under applicable regulatory requirements, purchase Other Commodity Interests and/or Futures Contracts listed on foreign exchanges. However, the Futures Contracts available on such foreign exchanges may have different underlying sizes, deliveries, and prices than the Benchmark Component Futures Contracts. In addition, the Futures Contracts available on these exchanges may be subject to their own position limits or similar restrictions. In any case, notwithstanding the potential availability of these instruments in certain circumstances, position limits could force the Fund and the Underlying Funds to limit the number of Creation Baskets (as defined below) that they sell.[17]

Calculation of NAV

The Fund's NAV is calculated by taking the current market value of its total assets and subtracting any liabilities. The Administrator will

[14] With respect to the Underlying Funds, the creditworthiness of each potential counterparty will be assessed by the Sponsor. The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the Sponsor.

[15] The Sponsor represents that the Fund and Underlying Funds will invest in their applicable Commodity Interests in a manner consistent with their respective investment objectives and not to achieve additional leverage.

[16] According to the Registration Statement, the Sponsor believes that market arbitrage opportunities will cause the Fund's Share price on the NYSE Arca to closely track the Fund's NAV per Share. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between the Fund's NAV and the Underlying Fund Average will be that the changes in the price of the Fund's Shares on the NYSE Arca will closely track, in percentage terms, changes in the Underlying Fund Average.

[17] With respect to the Fund, there will be no specified limit on the maximum amount of Creation Baskets that can be sold. At some point, however, applicable position limits may practically limit the number of Creation Baskets that will be sold if the Sponsor determines that the other investment alternatives available to the Fund at that time will not enable it to meet its stated investment objective.

calculate the NAV of the Fund once each trading day as of the earlier of the close of the New York Stock Exchange (''NYSE'') or 4 p.m. Eastern time (''E.T.''). The NAV for a particular trading day will be released after 4:15 p.m. E.T.

For purposes of determining the Fund's NAV, the Fund's investments in the Underlying Funds will be valued based on the Underlying Funds' NAVs. In turn, in determining the value of the Futures Contracts held by the Underlying Funds, the Administrator will use the closing price on the exchange on which they are traded. The Administrator will determine the value of all other Fund and Underlying Fund investments as of the earlier of the close of the NYSE or 4 p.m. E.T. The value of Cleared Swaps and over-the-counter Commodity Interests will be determined based on the value of the commodity or Futures Contract underlying such Commodity Interest, except that a fair value may be determined if the Sponsor believes that the Underlying Fund is subject to significant credit risk relating to the counterparty to such Commodity Interest. Treasury Securities held by the Fund or Underlying Funds will be valued by the Administrator using values received from recognized third-party vendors (such as Reuters) and dealer quotes. NAV will include any unrealized profit or loss on open Commodity Interests held by each Underlying Fund and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

Dissemination of Indicative Fund Value

The Indicative Fund Value (''IFV'') will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session (9:30 a.m. to 4 p.m. E.T.) to reflect changes in the values of the Underlying Funds' shares. Changes in the value of Treasury Securities and cash equivalents will not be included in the calculation of IFV. For this and other reasons, the IFV disseminated during NYSE Arca trading hours should not be viewed as an actual real time update of the NAV.

The IFV for the Fund and each Underlying Fund will be widely disseminated by one or more major market data vendors on a per share basis every 15 seconds during the NYSE Arca Core Trading Session.[18] The normal trading hours for Futures Contracts may begin after 9:30 a.m. and end before 4 p.m. E.T., and there is a gap in time at the beginning and the end of each day during which the Underlying Funds' shares are traded on the NYSE Arca, but real-time trading prices for at least some of the Futures Contracts held by the Underlying Funds are not available. As a result, during those gaps there will be no update to the IFVs of the Underlying Funds and such IFVs, therefore, will be static.

Creation and Redemption of Shares

The Fund will create and redeem Shares from time to time, but only in one or more ''Creation Baskets'' or ''Redemption Baskets,'' each consisting of 100,000 Shares. The creation and redemption of baskets are made in exchange for delivery to the Fund or the distribution by the Fund of the amount of cash equal to the combined NAV of the number of Shares included in the baskets being created or redeemed determined as of 4 p.m. E.T. on the day the order to create or redeem baskets is properly received.

Authorized Purchasers are the only persons that may place orders to create and redeem baskets. Authorized Purchasers must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions that are not required to register as broker-dealers to engage in securities transactions as described in the Registration Statement, and (2) Depository Trust Company participants.

The total deposit required to create each basket (''Creation Basket Deposit'') is the amount of Treasury Securities and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the purchase order date.

The procedures by which an Authorized Purchaser can redeem one or more baskets mirror the procedures for the creation of baskets. On any business day, an Authorized Purchaser may place an order with the Distributor to redeem one or more baskets. Creation and redemption orders must be placed by noon E.T.

The redemption distribution from the Fund will consist of a transfer to the redeeming Authorized Purchaser of an amount of Treasury Securities and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

The Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[19] the Trust will rely on the exception contained in Rule 10A–3(c)(7).[20] A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

A more detailed description of the Fund, Underlying Funds, fees, Commodity Interests and other aspects of the applicable commodities markets, as well as investment risks, are set forth in the Registration Statement and the registration statements relating to the Underlying Funds and the releases approving the listing and trading of the Underlying Funds.[21] All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information Regarding the Shares

The Web site for the Fund (*www.teucriumtagsfund.com*) and/or the Exchange, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) the bid-ask price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information. The Fund will also disseminate the Fund's holdings on a daily basis on the Fund's Web site.

The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. The Exchange will also make available

[18] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IFVs published on Consolidated Tape Association (''CTA'') or other data feeds.

[19] 17 CFR 240.10A–3.

[20] 17 CFR 240.10A–3(c)(7).

[21] *See* notes 7 and 9, *supra*.

on its Web site daily trading volume of each of the Shares and shares of the Underlying Funds, closing prices of the Shares and shares of the Underlying Funds, and the corresponding NAV for the Fund and the Underlying Funds. The closing price and settlement prices of the corn, wheat and soybean Futures Contracts are also readily available from the CBOT, and of sugar Futures Contracts from ICE Futures. In addition, such prices are available from automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Each Benchmark and the Underlying Fund Average will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. Quotation and last-sale information regarding the Shares and shares of the Underlying Funds will be disseminated through the facilities of the CTA.

The daily settlement prices for the corn, wheat and soybeans Futures Contracts are publicly available on the Web site of the CBOT (*www.cmegroup.com*) and, for the sugar Futures Contracts, on the Web site of ICE Futures (*www.theice.com*). In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that quotation and last sale information for the corn, wheat, soybeans and sugar Futures Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such contracts is available by subscription from Reuters and Bloomberg. The CBOT and ICE Futures also provide delayed futures information on current and past trading sessions and market news free of charge on their Web sites. The specific contract specifications for such contracts are also available at the CBOT and ICE Futures Web sites, as well as other financial informational sources. The spot price of corn, wheat, soybeans and sugar also is available on a 24-hour basis from major market data vendors.

The Fund will provide Web site disclosure of its portfolio holdings daily and will include the names, quantity, price and market value of shares of the Underlying Funds held by the Fund and other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. In addition, the Underlying Funds provide Web site disclosure of their respective portfolio holdings daily and include the names, quantity, price and market value of such holdings and the characteristics of such holdings. The Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund and each Underlying Fund through the applicable fund's Web site.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in TIRs to facilitate surveillance. See ''Surveillance'' below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Futures Contracts or shares of the Underlying Funds, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [22] or by the halt or suspension of trading of the Futures Contracts or shares of the Underlying Funds.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the Underlying Fund Average or the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark occurs. If the interruption to the dissemination of the IFV, the Underlying Fund Average, the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[23] In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, shares of the Underlying Funds, and the physical commodities included in, or options, futures or options on futures on, Shares and shares of the Underlying Funds through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges

[22] *See* NYSE Arca Equities Rule 7.12.

[23] The Exchange notes that, for each of the Underlying Funds, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the applicable Benchmark Component Futures Contracts or Benchmark occurs.

that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. With respect to the Underlying Funds, which are listed and traded on the Exchange, the Exchange can obtain market surveillance information from CBOT, NYMEX and ICE Futures, which are ISG members, and from Kansas City Board of Trade (''KCBT'') and Minneapolis Grain Exchange (''MGEX'') in that the Exchange has in place a comprehensive surveillance sharing agreement with KCBT and MGEX. A list of ISG members is available at *www.isgportal.org.*[24]

In addition, to the extent that the Fund invests in Futures Contracts, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.[25]

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of corn, wheat, soybean and sugar futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Fund and that the NAV for the Shares is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[26] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Benchmark Component Futures Contracts are traded on futures exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The closing price and settlement prices of the Futures Contracts for corn, wheat and soybeans are readily available from the CBOT, and of Futures Contracts for sugar from ICE Futures. In addition, such prices are available from automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Each Benchmark and the Underlying Fund Average will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. The Fund and the Underlying Funds will provide Web site disclosure of their portfolio holdings daily. Quotation and last-sale information regarding the Shares and shares of the Underlying Funds will be disseminated through the facilities of the CTA. The IFV for the Fund and the Underlying Funds will be widely disseminated on a per share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session. The Exchange may halt trading during the day in which the interruption to the dissemination of the IFV or the Underlying Fund Average or the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark occurs. If the interruption to the dissemination of the IFV, or the Underlying Fund Average or the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Fund and the Underlying Funds on a daily basis information with respect to the recent NAV per share and shares outstanding.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded

[24] The Exchange notes that not all Futures Contracts may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[25] The Exchange notes that, with respect to the Underlying Funds' Futures Contracts traded on exchanges, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[26] 15 U.S.C. 78f(b)(5).

product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, IFV, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–97 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–185 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66100; File No. SR–Phlx–2011–185]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

January 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' at Part A, entitled ''Single contra-side orders,'' to amend the Customer Fee for Removing Liquidity to increase the fee in order to recoup additional costs associated with paying rebates to attract additional order flow.

Currently, Section I of the Fee Schedule, which applies to certain select symbols,[3] is comprised of a Part A, single contra-side order fees, and a Part B, Complex Order fees.[4] There are currently several categories of market participants: Customers, Directed Participants,[5] Specialists,[6] Registered Options Traders,[7] SQTs,[8] RSQTs,[9] Broker-Dealers, Firms and Professionals.[10] Currently, the Exchange pays the following Fees for Removing Liquidity:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Fee for Removing Liquidity	$0.29	$0.35	$0.37	$0.45	$0.45	$0.45

The Exchange proposes to increase the Customer Fee for Removing Liquidity from $0.29 per contract to $0.31 per contract. The Exchange is not proposing to amend any other rebates or fees in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to increase the Customer Fee for Removing Liquidity is reasonable because the Customer currently pays the lowest Fee to Remove Liquidity and would pay the lowest fee when compared to other market participants with this proposal. The Exchange is filing this proposal to recoup costs associated with paying Customers rebates to attract order flow to the Exchange.[13] The Exchange believes that offering such rebates incentivizes Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants.

The Exchange believes it is equitable and not unfairly discriminatory to increase the Customer Fee for Removing Liquidity because, as mentioned, compared to other participants the Customer would pay the lowest Fee for Removing Liquidity and the Customer also receive the highest Rebate for Adding Liquidity as compared to other market participants.[14] Also, the rebate is within the range of fees assessed by BATS Exchange, Inc. (''BATS'').[15]

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend

[3] Select symbols shall be defined as options overlying the following symbols: AA, AAPL, ABX, AIG, ALL, AMD, AMR, AMZN, AXP, BAC, BRCD, C, CAT, CIEN, CSCO, DELL, DIA, DRYS, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SLW, SMH, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, UYG, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP, XRX and YHOO (''Select Symbols''). These symbols are Multiply-Listed.

[4] The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will continue to apply only to electronic orders.

[5] A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[6] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[7] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[8] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[9] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[10] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] The Exchange recently increased the Rebate for Adding Liquidity for Professionals. *See* Securities Exchange Act Release No. 65940 (December 12, 2011), 76 FR 78322 (December 16, 2011) (SR–Phlx–2011–162).

[14] The Exchange recently filed a proposed rule change to decrease the Professional Rebate for Adding Liquidity for Single contra-side orders to $0.23 per contract. The rule change was filed as immediately effective with an operative date of January 3, 2012. *See* SR–Phlx–2011–184.

[15] *See* BATS' (BZX) Exchange Fee Schedule (a Customer pays either a $0.27 per contract or $0.30 per contract remove fee depending on average daily volume).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–185 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–185. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–185 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–187 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66099; File No. SR–Phlx–2011–184]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

January 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' at Part A, entitled ''Single contra-side orders,'' to amend the Professional[3] Rebate for Adding Liquidity in order to treat a Professional similar to other non-customer market participants for purposes of the rebate.

Currently, Section I of the Fee Schedule, which applies to certain select symbols,[4] is comprised of a Part A, single contra-side order fees, and a Part B, Complex Order fees.[5] There are currently several categories of market participants: Customers, Directed Participants,[6] Specialists,[7] Registered

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[4] Select symbols shall be defined as options overlying the following symbols: AA, AAPL, ABX, AIG, ALL, AMD, AMR, AMZN, AXP, BAC, BRCD, C, CAT, CIEN, CSCO, DELL, DIA, DRYS, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SLW, SMH, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, UYG, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP, XRX and YHOO (''Select Symbols''). These symbols are Multiply-Listed.

[5] The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will continue to apply only to electronic orders.

[6] A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[7] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

Options Traders,[8] SQTs,[9] RSQTs,[10] Broker-Dealers, Firms and Professionals. Currently, the Exchange pays the following Rebates for Adding Liquidity:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	$0.26	$0.23	$0.23	$0.00	$0.00	$0.26

The Exchange proposes to decrease the Professional Rebate for Adding Liquidity from $0.26 per contract to $0.23 per contract. The Exchange is not proposing to amend any other rebates or fees in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to decrease the Rebate for Adding Liquidity for Professionals is reasonable because a Professional would be paid the same rebates as other market makers.[13] Currently, a Customer and Professional are paid the highest Rebate for Adding Liquidity available for Single contra-side orders. The Exchange believes that paying a Customer a higher rebate, as compared to market participants, incentivizes Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants. The Exchange recently increased the Rebate for Adding Liquidity for Professionals,[14] while it also increased the Professional Fee for Removing Liquidity for Single contra-side orders, to a rate equal to Firms and Broker-Dealers. The Exchange believes that it is reasonable to now decrease the Professional Rebate for Adding Liquidity to the same rate that is paid to market makers, thereby paying Customers the highest rebate. The Exchange believes that Professionals would still benefit from a rebate, which is not offered to Firms and Broker-Dealers, while also being assessed the same rates as Firms and Broker-Dealers to remove liquidity. A Professional would be paid the same rebate as is currently offered to all other non-Customer market participants receiving a Rebate for Adding Liquidity for Single contra-side orders. With respect to the Fee for Removing Liquidity in Single contra-side orders, Directed Participants, Specialists, ROTs, SQTs and RSQTs, are assessed lower fees because they have quoting obligations,[15] unlike Firms, Broker-Dealers and Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to pay a Professional a Rebate for Adding Liquidity similar to market makers because the Professional is still advantaged by a rebate as compared to Firms and Broker-Dealers. Section I Fees for Removing Liquidity in both Single contra-side orders and Complex Orders align Professionals with Firms and Broker-Dealers.[16] All Professionals would be equally eligible to receive the Rebate for Adding Liquidity. In addition, the Exchange's Rebates for Adding Liquidity are within the range of fees assessed by the International Securities Exchange, LLC (''ISE'').[17]

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission

[8] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[9] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[10] An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] The Exchange market maker category includes Specialists (*see* Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (*see* Rule 1014(b)(ii)(B)). This would also include Directed Participants. The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[14] *See* Securities Exchange Act Release No. 65940 (December 12, 2011), 76 FR 78322 (December 16, 2011) (SR–Phlx–2011–162).

[15] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] See Section I of the Fee Schedule at Parts A and B.

[17] *See* ISE's Fee Schedule (a Professional is assessed the same fees and paid the same rebates similar to a Firm for simple orders and complex orders).

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2011–184 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–184. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–184 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–186 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66097; File No. SR–Phlx-2011–149]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Delete Exchange Rule 795 ''Member Officer or Director''

January 4, 2012.

I. Introduction

On November 3, 2011, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete Exchange Rule 795 ''Member Officer or Director.'' The proposed rule change was published in the **Federal Register** on November 21, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

The Exchange proposes to delete current Exchange Rule 795 ''Member Officer or Director.'' Exchange Rule 795 provides that a member of the Exchange shall not be an officer or director of, or own or control, directly or indirectly, a substantial interest in a corporation engaged in the securities business which is not a member organization of the Exchange, except with the written permission of the Exchange.

III. Commission Findings and Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,[4] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[6]

The Exchange represented that Exchange Rule 795 was adopted prior to the Exchange's demutualization in 2004 and that, prior to demutualization there may have been an interest in the Exchange being notified of, and approving, a member's role in another entity. The Exchange further represented that it has not utilized Exchange Rule 795 in over 10 years and does not believe that the Exchange should be in a position to control an Exchange member's role in another entity.

The Commission believes that the proposal should clarify the Exchange's rulebook by removing an outdated and unused rule. Further, the Commission believes that deletion of Exchange Rule 795 could allow Exchange members to conduct transactions with regard to other corporations engaged in the securities business which are not Exchange member organizations more expeditiously. Accordingly, the Commission finds that the proposal would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, and is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2011–149) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–184 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65745 (November 14, 2011), 76 FR 72018.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66095; File No. SR–NASDAQ–2011–174]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

January 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the Internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from January 1, 2012 through March 31, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [October 1, 2011] *January 1, 2012,* NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of Internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for Internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent during 2012.

NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC* [sic], 615 F.3d 525 (DC Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion* [sic], at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [7]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *NetCoaliton* [sic], at 535.

[8] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to ''upgrade'' the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the Internet after being purchased).[9] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the Internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm experiences a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than

[9] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the Internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the Internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006–060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[10] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. Earlier this year, SIFMA and NetCoalition filed a petition seeking review by the United States Court of Appeals for the District of Columbia Circuit with respect to the NLS pricing pilot in effect from July 1, 2011 through September 30, 2011. SIFMA, NetCoalition, and the Commission have moved the court to stay that appeal pending resolution of the consolidated case *NetCoalition v. SEC,* Nos. 10–1421, 10–1422, 11–1001, and 11–1065 (''*NetCoalition* II'').

The letters submitted by SIFMA and NetCoalition incorrectly assert that the original *NetCoalition* case stands for the proposition that the Commission must review cost data to substantiate a determination that competitive forces constrain the price of market data. In fact, the court held the opposite:

> The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[11]

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in the prior filing, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letters not only mischaracterize the *NetCoalition* decision, they also fail to address the characteristics of the product at issue and the evidence already presented.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–174 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–174. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

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[10] Securities Exchange Act Release No. 65488 (October 5, 2011), 76 FR 63334 (October 21, 2011) (SR–NASDAQ–2011–132); Securities Exchange Act Release No. 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[11] *NetCoalition,* 615 F3d. at 534. While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.

The court explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–10. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–174 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–182 Filed 1–9–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66092; File No. SR–NASDAQ–2011–175]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

January 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change immediately. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 27, 2011, NASDAQ experienced a technical issue with some order entry ports using the Financial Information Exchange (''FIX'') protocol. The issue, which was caused by a software release that had an unintended effect on FIX order entry ports, resulted in numerous ''cancel reject'' messages being sent to market participants that sent cancel requests to NASDAQ. Upon the issue being discovered, the FIX ports of approximately fifty members were disconnected for approximately ninety minutes to allow the software release to be removed and the prior version to be made operational.

Because NASDAQ's fee and rebate schedule in Rule 7018 provides that members may achieve better pricing if they achieve certain specified volumes of activity during a given month, the FIX port issue may have impacted the ability of affected members to reach the required volumes. For example, a member with shares of liquidity provided in all securities through one of its Nasdaq Market Center market participant identifiers (''MPIDs'') that represent more than 0.90% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities (''Consolidated Volume'') during a month receives a rebate of $0.00295 per share executed with respect to liquidity that it provides during the month through displayed quotes/orders. By contrast, members providing lower volumes of liquidity receive lower rebates with respect to displayed quotes/order ranging from $0.0020 to $0.0029 per share executed. If a member had provided liquidity that represented slightly in excess of 0.90% of Consolidated Volume on each day of December 2011 other than December 27, but was prevented from reaching comparable levels on that date due to the FIX port issue, it is possible that the rebate it would ultimately earn for the entire month would be lower than would otherwise have been the case. Similarly, under Rule 7014, a member may be entitled to receive an enhanced rebate under NASDAQ's Investor Support Program or Pre-Market Investor Program, based on its achievement of certain volume criteria specified in the rule. The ability of a member to achieve these criteria may have also been affected by the FIX port issue.

Accordingly, in order to ensure that fees and rebates are not adversely impacted by the FIX port issue, NASDAQ proposes to exclude December 27 from calculations made under Rules 7014 and 7018 if doing so would allow a member to achieve more favorable pricing than would be the case if the day were included. Thus, members that are unaffected by the FIX port issue would not have the day arbitrarily excluded from their calculations. NASDAQ will perform all calculations needed to implement the change. If a member believes that it incurred other costs as a result of the FIX port issue, claims for such costs would be governed by NASDAQ Rule 4626, which establishes procedures for claims against NASDAQ for costs associated with NASDAQ system issues.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ believes that the proposed change is reasonable because it will allow members to receive December 2011 pricing that is based on either the exclusion, or the inclusion, of December 27, whichever is more favorable to the member. The proposed change is equitable, because it will ensure that the fees and rebates applicable to members that were subject to the FIX port issue are not adversely affected by the issue.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The change will help to ensure that members that were affected by the FIX port issue are not required to pay higher fees, or receive lower rebates, during December 2011 than would otherwise be the case. Accordingly, NASDAQ believes that the proposed changes will protect members from incurring unanticipated charges.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–175 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–175. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–175, and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–179 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66093; File No. SR–BX–2011–086]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Definition of Theoretical Price

January 4, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, NASDAQ OMX BX (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 20 (Obvious and Catastrophic Errors) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to amend the definition of theoretical price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a change to Chapter V, Section 20 (Obvious and Catastrophic Errors). Under the current rule, an obvious error occurs when the execution price of a transaction is above or below the Theoretical Price for the series by a specified amount. Currently, the ''Theoretical Price'' of an option series is defined in the rule, if the series is traded on at least one other options exchange, as the ''National Best Bid with respect to an erroneous sell transaction, and National Best Offer with respect to an erroneous buy transaction, just prior to the trade in question.'' If there are no quotes for comparison, the Theoretical Price is determined by the Market Regulation Center (''MRC'').[4]

The Exchange is now proposing to amend the definition of Theoretical Price so that when the series is traded on at least one other options exchange, the Theoretical Price will be the mid-point of the National Best Bid or Offer (''NBBO''), just prior to the trade in question. Alternatively, if there are no quotes for comparison, the Theoretical

[4] MRC is defined in the BOX Rules to mean the Exchange's facilities for surveilling and regulating the conduct of business for options on BOX. MRC personnel are employees of BOXR and are not affiliated with BOX Options Participants.

Price will continue to be determined by the MRC. This proposed rule change would amend this provision to be substantially similar to Chapter V, Section 6(c)(i) of the NASDAQ Options Market (''NOM'') and Rule 20.6(c)(1) of BATS Options.

2. Statutory Basis

This proposed rule change is designed to allow personnel of the MRC (i.e., BOXR) an alternative solution in reviewing a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the obvious error process on BOX.

Using the mid-point of the NBBO as the Theoretical Price should reduce the risk to parties trading on BOX. The Exchange believes the proposed rule change will incorporate an objective approach in determining obvious errors that is consistent with other options exchanges. The Exchange believes that the change would benefit investors and market participants that are members of multiple exchanges by more closely aligning the Exchange's rules with respect to obvious errors with those of other electronic options exchanges, while continuing to utilize an objective standard when making adjustment decisions. As such, the Exchange believes that its process for rendering and reviewing trade adjustment determinations is consistent with the Act, and with the maintenance of a fair and orderly market and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[7] and Rule 19b-–(f)(6) thereunder.[8]

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–086 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–180 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66094; File No. SR–NYSEARCA–2011–103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Implementation Date of the NYSE Arca Equities Rule 7400 Series, the Order Audit Trail System Rules, for Equity Trading Permit Holders That Are Not Financial Industry Regulatory Authority Members to March 31, 2012

January 4, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 30, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date of the NYSE Arca Equities Rule 7400 Series, the Order Audit Trail System (''OATS'') Rules, for Equity Trading Permit (''ETP'') Holders that are not Financial Industry Regulatory Authority (''FINRA'') members from January 31, 2012 to March 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the implementation date of the OATS Rules for ETP Holders that are not FINRA members from January 31, 2012 to March 31, 2012.

On October 12, 2011, NYSE Arca adopted the OATS Rules for ETP Holders that are dual members of NYSE Arca and FINRA (''Dual Members'') and ETP Holders that are not FINRA members (*i.e.,* NYSE Arca proprietary firms) with implementation beginning on October 17, 2011 for Dual Members and on January 31, 2012 for non-FINRA members.[4] Since that time, the Exchange has been advised by certain NYSE Arca proprietary firms that meeting the OATS record-keeping obligations requires significant technology resources. In particular, although it is an NYSE Arca Equities rule, it governs record-keeping for all National Market System (''NMS'') stocks that these firms trade, regardless of the venue. While these NYSE Arca proprietary firms have been working toward completing the technology changes required by the NYSE Arca OATS Rules, these firms have had, and continue to have, several competing regulatory technology changes to make, including complying with the Commission's large trader reporting requirements,[5] and until November 30, 2011, meeting the Commission's market access rule technology requirements.[6]

Because these are NYSE Arca proprietary firms, the regulatory risk of extending the time to comply is low in that the extension should not impact any surveillances or reviews relating to customer trading. In addition, because the rules impose record-keeping requirements, extending the compliance date should not impact any ongoing FINRA surveillances. Finally, for these NYSE Arca proprietary firms, they already maintain records required by the rules in other formats, as required by Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 (the ''Exchange Act'').

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that extending the implementation date of the OATS Rules for NYSE Arca proprietary firms will ensure that these firms have sufficient time to make the necessary changes to their systems to be able to comply with the new OATS recording and reporting requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 65544 (October 12, 2011), 76 FR 64406 (October 18, 2011) (SR–NYSEArca–2011–69).

[5] 17 CFR 240.13h–1.

[6] 17 CFR 240.15c3–5.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2011–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2011–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2011–103 and should be submitted on or before January 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–181 Filed 1–9–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12978 and #12979]

Georgia Disaster #GA–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 12/29/2011.

Incident: Severe Storms Tornadoes.

Incident Period: 12/22/2011.

DATES: *Effective Date:* 12/29/2011.

Physical Loan Application Deadline Date: 02/27/2012.

Economic Injury (EIDL) *Loan Application Deadline Date:* 09/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Floyd.

Contiguous Counties:

Georgia: Bartow, Chattooga, Gordon, Polk, Walker.

Alabama: Cherokee.

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12978 C and for economic injury is 12979 0.

The States which received an EIDL Declaration # are: Georgia and Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2012–194 Filed 1–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 9.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 through 12/31/2011.

Effective Date: 12/31/2011.

Physical Loan Application Deadline Date: 01/06/2012.

EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

[13] 17 CFR 200.30–3(a)(12).

declaration for the State of Texas, dated 09/09/2011 is hereby amended to establish the incident period for this disaster as beginning 08/30/2011 and continuing through 12/31/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–259 Filed 1–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12909 and #12910]

Virginia Disaster Number VA–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Virginia (FEMA–4042–DR), dated 11/04/2011.

Incident: Earthquake.

Incident Period: 08/23/2011 Through 10/25/2011.

Effective Date: 12/28/2011.

Physical Loan Application Deadline Date: 03/05/2012.

EIDL Loan Application Deadline Date: 08/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Virginia, dated 11/04/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Culpeper, Fluvanna, Goochland, Orange, Spotsylvania, Fredericksburg City.

Contiguous Counties: (Economic Injury Loans Only):

Virginia: Buckingham, Caroline, Chesterfield, Cumberland, Fauquier, Greene, Henrico, Madison, Powhatan, Rappahannock, Stafford.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–206 Filed 1–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12848 and # 12849]

Texas Disaster Number TX–00382

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4029–DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 Through 12/31/2011.

Effective Date: 12/31/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 09/21/2011, is hereby amended to establish the incident period for this disaster as beginning 08/30/2011 and continuing through 12/31/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–257 Filed 1–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12921 and #12922]

Virginia Disaster Number VA–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA—4042–DR), dated 11/10/2011.

Incident: Earthquake.

Incident Period: 08/23/2011 through 10/25/2011.

Effective Date: 12/28/2011.

Physical Loan Application Deadline Date: 01/09/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 08/10/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 11/10/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Culpeper, Northampton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–256 Filed 1–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the second quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the 2nd quarter will be held on the following dates:

Tuesday, January 17, 2012 at 1 p.m. EST.

Tuesday, February 21, 2012 at 1 p.m. EST.

Tuesday, March 20, 2012 at 1 p.m. EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

—SBA Update.
—Annual Meetings.
—Board Assignments.
—Member Roundtable.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by fax or email. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street SW., Washington, DC 20416, Phone, (202) 619–1612, Fax (202) 481–0134, email, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Dan S. Jones,

Committee Management Officer.

[FR Doc. 2012–205 Filed 1–9–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the fourth public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, January 20, 2012, from 9 a.m. to 12 noon in the Eisenhower Conference Room, Side A & B, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOBs) and service-disabled veterans (SDVOSBs). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal government.

On November 1, 2011, The Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 recommendations that were applicable to the ''six focus areas'' identified above. The purpose of the meeting is scheduled as a full Task Force meeting. The agenda will include a presentation and discussion of the recommendations included in the Task Force Report to the President.

In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Raymond B. Snyder, by January 13, 2012, by email in order to be placed on the agenda. Comments for the Record should be applicable to the ''six focus areas'' of the Task Force and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible. Written comments should be emailed to Raymond B. Snyder, Deputy Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, at the email address for the Task Force, *vetstaskforce@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Raymond B. Snyder, Designated Federal Official for the Task Force at (202) 205–6773; or by email at: *raymond.snyder@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: January 3, 2012.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2012–261 Filed 1–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 7721]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Tuesday, January 31, 2012, in room 1107 of the Harry S. Truman Building at the U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will examine a New Focus on Investment: Attracting Inbound Foreign Direct Investment to the United States, and will highlight the U.S.-Turkey Economic Partnership Commission. Subcommittee reports will be led by the Investment Subcommittee, the Sanctions Subcommittee, and the Subcommittee on Women in International Economic Policy.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, January 27, their name, professional affiliation, valid government-issued ID number (*i.e.,* U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship, to Ronelle Jackson by fax

(202) 647–5936, email (*JacksonRS@state.gov*), or telephone (202) 647–9204. Participants may enter the Department of State from the entrance on 23rd Street. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Ronelle Jackson prior to Tuesday, January 24. Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Deputy Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *EnochT@state.gov.*

Dated: December 29, 2011.

Emily Bruno,

Acting Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2012–232 Filed 1–9–12; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of the Results of the 2010 GSP Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces (1) the disposition of the product petitions accepted for review in the 2010 GSP Annual Review, and (2) the status of country practices petitions accepted as part of GSP annual reviews, including the 2010 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street NW., Room F–214, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the email address is *Tameka_Cooper@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended, and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2010 GSP Annual Review, the Trade Policy Staff Committee (TPSC) reviewed two petitions to change product coverage of the GSP. Based on the TPSC's review and the recommendation of the U.S. Trade Representative, President Obama removed one product—sleeping bags, not containing 20 percent or more by weight of feathers and/or down (HTSUS 9404.30.80)—from eligibility for duty-free treatment under GSP, effective January 1, 2012, because it is import-sensitive in the context of GSP. (See Presidential Proclamation 8770 of December 29, 2011.) A petition to remove GSP duty-free treatment for two types of self-adhesive plastic tape (HTSUS 3919.10.20 and 3919.90.50) was denied.

There are no changes at this time to the status of those country practice petitions accepted in the 2010 GSP annual review and continued from earlier annual reviews. A list of all of the country practice petitions under review can be found on the USTR Web site at *http://www.ustr.gov/webfm_send/3218* in List II (Petitions for Review of Country Practices).

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2012–250 Filed 1–9–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–1442]

Order Limiting Scheduled Operations at Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of FAA Decision on Request for Waiver of the Slot Usage Requirement.

SUMMARY: This action grants with conditions a request by Airlines for America (A4A) for a waiver of the slot usage requirement for operating authorizations (slots) at Newark Liberty International Airport (EWR) due to construction at the airport during the summer 2012 and winter 2012–13 scheduling seasons.

DATES: Effective upon publication. The deadlines for temporary slot returns under this waiver are March 16, 2012, for summer 2012 slots and August 15, 2012, for winter 2012–13 slots.

FOR FURTHER INFORMATION CONTACT: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; email: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

By letter dated December 6, 2011, A4A requested the FAA grant a limited waiver of the slot usage requirement for EWR during the 2012 runway 4R–22L reconstruction project. In support of its request, A4A referenced a waiver granted by the FAA in 2010 due to a runway construction project at John F. Kennedy International Airport.[1]

The Port Authority of New York and New Jersey (Port Authority) will resurface EWR runway 4R–22L. In addition, the Port Authority will undertake preparatory work for new taxiways and install new runway lighting and electrical infrastructure. This major project is scheduled for between April 15 and December 15, 2012. The construction schedule, which may be adjusted because of weather conditions, is:

- Nightly closure (0030 through 0630) of runway 4R–22L from April 15 through December 15.
- Extended weekend closure of runway 4R–22L from April 15 through November 15.[2] Closure will occur from 0030 on Saturday through 1100 on Sunday.
- Closure of runway 4R–22L from September 8 through September 17.
- Closure of the intersection of runway 4R–22L and runway 11–29 from May 4 through May 9. This closure will result in shortening the available lengths of both runways.

A4A contends the closures will significantly affect EWR's throughput because runway 4R–22L is the airport's principal arrival runway. During the

[1] 74 FR 52838 (Oct. 14, 2009).

[2] Construction work is not scheduled for the weekends of March 12–13, June 30–July 1, and July 7–8.

construction closures, both arrivals and departures must share runway 4L–22R. Construction closures that shorten the length of cross-wind runway 11–29 may reduce the number of arrivals and departures that can use that runway.

EWR is one of the busiest airports in the nation and currently experiences significant delay. A4A argues construction closures, and the resulting decreased throughput, likely will increase airport delays. The FAA, the Port Authority, and airlines have discussed mitigations of construction-related delays, and the construction schedule, which limits the closures, reflects those discussions.

FAA Analysis

Under the Order limiting scheduled operations at EWR, slots must be used at least 80 percent of the time. This rule is expected to accommodate routine weather and other cancellations under all but the most unusual circumstances. Slots not meeting the minimum usage rules will not receive historic precedence for the following corresponding scheduling season.[3] The FAA may grant a waiver from the slot usage requirement in highly unusual and unpredictable conditions that are beyond a carrier's control and affect a carrier's operations for a period of five or more consecutive days. However, the FAA does not routinely grant general waivers to the usage requirement except under the most unusual circumstances.

The FAA has determined that the projected operational, congestion, and delay impacts of the 2012 EWR runway construction meet the requirements for a temporary waiver of the slot usage requirement. Considering the throughput impacts during construction, reducing operations to minimize congestion and delays is in the public interest. Carriers that temporarily reduce flights and elect to temporarily return slots to the FAA rather than transfer them for another carrier's use should not be penalized by permanently losing the authority to operate.

FAA Decision

In consideration of the foregoing, A4A's request for a waiver is *granted with conditions.* This waiver applies only to EWR slots for the following days: (1) Saturdays and Sundays from April 15 through November 15; (2) May 4 through May 9, and (3) September 8 through September 17. To obtain a waiver for a specific slot held, a carrier must temporarily return to the FAA slots that it will not operate during the waiver period. The carrier will retain historical precedence for these temporarily returned slots. These temporary slot returns permit the FAA to plan for days on which construction closures and resulting operational impacts occur. If the closure dates change due to weather, the FAA will apply the waiver, including retroactively, if a carrier notifies the FAA that the temporarily returned slots will not be operated on any new closure dates. For summer 2012 slots, the temporary slot return deadline is Friday, March 16, 2012. For winter 2012–13 slots, the temporary slot return deadline is Wednesday, August 15, 2012. Temporary slot returns should be submitted to the Slot Administration Office by email at *7-awa-slotadmin@faa.gov* or by facsimile at (202) 267–7277. These return notifications should indicate they are subject to this waiver.

Issued in Washington, DC, on January 4, 2012.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2012–253 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–13–P

[3] 76 FR 18618 (Apr. 4, 2011).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Erie County, NY

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (DOT).

ACTION: Rescinded Notice of Intent.

SUMMARY: FHWA is issuing this rescinded notice to advise the public that FHWA will not be preparing and issuing a Final Environmental Impact Statement for the proposed Peace Bridge Expansion Project in the city of Buffalo, Erie County, New York and the town of Fort Erie, Ontario Canada (NYSDOT Project Identification Number: 5753.58). The Peace Bridge Expansion Project (project) is a proposal for operational improvements at the Peace Bridge crossing between the United States and Canada. A notice of intent to prepare an EIS was published in the **Federal Register** on October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan D. McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Suite 719, 11A Clinton Avenue, Albany, New York 12207. Telephone (518) 431–4127, or Farhan F. Haddad, P.E., Deputy Director, Major Projects Office, New York State Department of Transportation, 50 Wolf Road, Albany, New York 12232. Telephone (518) 457–7282.

SUPPLEMENTARY INFORMATION: FHWA in cooperation with the New York State Department of Transportation (NYSDOT) and the Buffalo-Fort Erie Public Bridge Authority (PBA) previously intended to prepare an EIS to evaluate the impacts and alternatives to constructing a companion bridge to the existing structure and to expand the border crossing plaza for Federal inspection agencies with reconstruction, relocation, and improvements to connecting roadways as well.

As the project and environmental documentation developed from the original scope, significant spatial challenges resulted from the design and operational complexities required to meet the defined objectives (security requirements and operational improvements). At this time, the significantly large footprint and associated impacts that are required for an adequate design to meet the objectives of the project has caused the cost to escalate beyond the sponsor's ability to secure sufficient funding. This determination was reached as a result of the extensive analysis and coordination that has been conducted on this project to date. Additionally, as a result of the comprehensive environmental review and coordination with Federal and state resource agencies, the community and resource agency concerns relating to historic impacts, relocations, and other environmental impacts were at this time becoming increasingly paramount.

The project has been envisioned for over two decades and engendered controversy since its inception. The analysis and consultation which FHWA has conducted with the other lead agencies has established that the original purpose of improving operations and security at the border can be accomplished without a combined bridge and plaza improvements project and addressed by a project of more limited scope. The PBA will be evaluating a series of plaza operational improvements and minor construction projects and will not be seeking Federal funding for such work. In light of this information and funding constraints, FHWA has determined that the plaza improvements and bridge construction have independent utility with logical termini and do not foreclose future improvements or projects with respect to either facility. In light of this rescinded notice terminating the project, the actions of

the PBA comport in all respects with Federal law.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: January 4, 2012.

Jonathan D. McDade,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 2012–296 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed transportation corridor project (Provo Westside Connector) in Provo, Utah County in the State of Utah. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the FHWA actions on the highway project will be barred unless the claim is filed on or before July 8, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84129; telephone (801) 955–3524; email: *Edward.Woolford@dot.gov.* The FHWA Utah Division's regular business hours are Monday through Friday, 7:30 a.m. to 4:30 p.m. MST.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Utah: the Provo Westside Connector in Provo, Utah County, Utah, project number FHWA–UT–EIS–10–01–F. Federal Lead Agency: Federal Highway Administration.

Project description: The Selected Alternative (1860 South Alternative) implements a transportation project consisting of: (1) A new arterial roadway from the Interstate 15 interchange located at 1860 South/University Avenue (the Interchange) to 3110 West Street near the entrance to the Provo Airport (Mike Jense Parkway) in Provo; (2) three-way intersections located at 500 West, 1100 West, and Mike Jense Parkway; (3) the typical cross-section for the roadway consists of a total of five travel lanes: two travel lanes in each direction, and a center turn lane median, a 2-foot paved shoulder on each side, curb and gutter on the north side of the roadway, and a 10-foot paved trail on the south side of the roadway separated from the paved roadway by a 9-foot vegetated drainage swale (without curb and gutter); (4) three (3) parking pull-out locations are planned for trail access. One of these, at 500 West, replaces and improves an existing recreational access maintained by the Utah Division of Wildlife Resources; and an unpaved roadway accesses would be provided for private and public land parcels south of the roadway.

The actions by the FHWA and other Federal agencies, and the laws under which such actions were taken, are described in the FEIS for the project, approved on October 12, 2011, in the FHWA Record of Decision (ROD) issued on January 3, 2012, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record are available by contacting the FHWA at the address provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.provowestsideconnector.com* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128];

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)];

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303];

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712];

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*];

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209];

7. *Wetlands and Water Resources:* Safe Drinking Water Act [42 U.S.C. 300f *et seq.*]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood disaster Protection Act [42 U.S.C. 4001–129]. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species. Nothing in this notice creates a cause of action under these Executive Orders.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: January 4, 2012.

James C. Christian,

Division Administrator, Salt Lake City.

[FR Doc. 2012–292 Filed 1–9–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement on the Bottineau Transitway Project From Minneapolis to Maple Grove in Hennepin County, MN

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The FTA, as the lead federal agency, the Hennepin County Regional Railroad Authority (HCRRA), and the Metropolitan Council intend to prepare an EIS for the proposed Bottineau Transitway project located along the Bottineau Transitway Corridor in Hennepin County, Minnesota. The proposed transitway, approximately 13 miles long, would connect downtown Minneapolis with North Minneapolis

and the northwest suburbs of the Twin Cities. The transitway would originate in Minneapolis near the existing Target Field Station, where several existing transit lines converge, and would extend to the following suburbs: Robbinsdale, Golden Valley, Crystal, New Hope, Brooklyn Park, Maple Grove, and Osseo. The EIS will be prepared in accordance with Section 102(2)C of the National Environmental Policy Act of 1969 (NEPA) and pursuant to the Council on Environmental Quality's regulations (40 Code of Federal Regulations [CFR] parts 1500–08), as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this notice is to alert interested parties of the intent to prepare the EIS; provide information on the proposed transit project; invite public participation in the EIS process, including comments on the scope of the EIS proposed in this notice; and serve as an announcement of public and agency scoping meetings.

DATES: Written comments on the scope of the EIS should be sent to Brent Rusco, Bottineau Transitway Project Manager, on or before February 17, 2012. See **ADDRESSES** below for the locations to which written comments may be submitted. Public scoping meetings will be held on the following dates, in order to solicit input on the scope of the EIS:

- January 23, 2012, from 4:30 to 6:30 p.m., at the Theodore Wirth Chalet, 1301 Theodore Wirth Parkway, Minneapolis, Minnesota.
- January 24, 2012, from 6 to 8 p.m., at Brooklyn Park City Hall, 5200 85th Avenue North, Brooklyn Park, Minnesota.
- January 25, 2012, from 5:30 to 7:30 p.m., at the Urban Research and Outreach/Engagement Center (UROC), 2001 Plymouth Avenue North, Minneapolis, Minnesota.
- January 31, 2012, from 6 to 8 p.m., at the Robbinsdale City Hall, 4100 Lakeview Avenue North, Robbinsdale, Minnesota.

An interagency scoping meeting for agencies with interest in the project will be held on the following date:

- January 19, 2012, from 9 to 11 a.m., at the Kimley-Horn and Associates office, 2550 University Avenue West, Suite 238N, St. Paul, Minnesota.

All the scoping meetings will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Brent Rusco (see **ADDRESSES** below) at least 48 hours prior to the meeting. Project information outlining the project purpose and need, as well as alternatives proposed for analysis, will be available in the form of a scoping information packet, at the meetings and on the project Web site: *http://bottineautransitway.org.* Paper copies of the information may also be obtained from Brent Rusco [see **ADDRESSES** below].

ADDRESSES: Comments on the scope of the EIS will be accepted at the scoping meetings, or written comments should be sent to Brent Rusco, Bottineau Transitway Project Manager, Hennepin County, 701 Fourth Avenue South, Suite 400, Minneapolis, MN 55415, Phone: (612) 543–0579, Email: *Brent.rusco@co.hennepin.mn.us,* Fax: (612) 348–9710.

FOR FURTHER INFORMATION CONTACT: Lois Kimmelman, Environmental Protection Specialist, FTA Region V, Chicago, Illinois, (312) 353–4060; or Bill Wheeler, Community Planner, FTA Region V, Chicago, Illinois, (312) 353–2639.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA, HCRRA, and the Metropolitan Council invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS for the proposed Bottineau Transitway, including the project's purpose and need, the alternatives to be studied, the environmental impacts to be evaluated, and the evaluation methods to be used. Comments should address: (1) Feasible alternatives that may better achieve the project's purpose and need with fewer adverse impacts, and (2) any significant impacts relating to the alternatives.

''Scoping,'' as described in the regulations implementing NEPA (Title 40 of CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is during the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an EIS—should be identified. Impacts that are deemed not to be significant need not be developed extensively in the context of the EIS, thereby keeping the EIS focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations: ''to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives * * * [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.'' (Executive Order 11991 of May 24, 1977.)

Once the scope of the EIS is defined, and significant environmental issues to be addressed have been identified, an annotated outline of the EIS will be prepared that: (1) Documents the results of the scoping process, (2) contributes to the transparency of the process, and (3) provides a clear roadmap for concise development of the EIS.

Purpose and Need for the Project

The purpose of the Bottineau Transitway is to provide transit service which will satisfy the long-term regional mobility and local accessibility needs for businesses and the traveling public. Residents and businesses in the Bottineau Transitway project area need access to the region's activity centers to fully participate in the region's economy. Access to jobs in Minneapolis, St. Paul, the University of Minnesota, and the growing Minneapolis suburbs is crucial. Traffic congestion is expected to intensify in the Twin Cities Metropolitan Area through 2030 and beyond, and it cannot be addressed by highway construction alone. Current transit service in the Bottineau Transitway offers a limited number of viable alternatives to personal vehicles. Without major transit investments, it will be difficult to effectively meet the transportation needs of people and businesses in the corridor, manage highway traffic congestion in the project area, and achieve the region's 2030 Transportation Policy Plan (TPP) goal of doubling transit ridership by 2030.

Five factors contribute to the need for the Bottineau Transitway project:

- Growing travel demand resulting from continuing growth in population and employment.
- Increasing traffic congestion and limited funding.
- Growing numbers of people who depend on transit.
- Limited transit service to suburban jobs (reverse commute opportunities) and travel-time competitive transit options.
- Regional objectives for growth.

Project Location of Environmental Setting

The project is located in Hennepin County, Minnesota, and includes

downtown Minneapolis, Minnesota, and its northwest suburbs, including Robbinsdale, Golden Valley, Crystal, New Hope, Brooklyn Park, Maple Grove, and Osseo.

Possible Alternatives

The Bottineau Transitway Alternatives Analysis (AA) Study was completed by HCRRA in March 2010. The AA Study evaluated a no-build alternative and a broad range of build alternatives, including an enhanced bus/transportation system management alternative, as well as commuter rail, light rail transit (LRT), and bus rapid transit (BRT) alternatives. The study progressively narrowed down the build alternatives to a set of 21 alternatives which underwent detailed evaluation. The AA Study is posted on the project Web site.

The following alternatives are currently under consideration for further study in the EIS:

No-Build Alternative. The No-Build alternative serves as the baseline against which environmental effects of the Bottineau Transitway build alternatives are measured. It is defined as the existing transportation system in the Bottineau Transitway Corridor, plus any committed transportation improvements in the region, *i.e.,* those roadway, transit facility, and service improvements that are planned, programmed, and included in the TPP, and that are to be implemented by the year 2030. The No-Build Alternative does not include the Bottineau Transitway project. It does include major regional transit projects such as the Green Line (Central Corridor LRT and Southwest Transitway LRT), Red Line (Cedar Avenue BRT), and the Orange Line (I–35W BRT), as well as minor transit service expansions and/or adjustments in order to continue existing Metropolitan Council service policies.

Enhanced Bus/Transportation Systems Management (TSM) Alternative. The TSM alternative is defined as enhancements and upgrades to the existing transportation system in the Bottineau Transitway Corridor, such that the project's purpose and need would be met as much as possible without a major capital investment. The TSM alternative could include bus route restructuring, scheduling improvements, new express and limited-stop services, intersection improvements, and other focused infrastructure improvements that would heighten the functioning of the current transit system. The specific combination of improvements to be incorporated into this alternative will be developed during EIS process.

Light Rail Transit (LRT) Alternatives. All LRT alternatives would include several station stops between downtown Minneapolis and the Maple Grove/Brooklyn Park area. These alternatives, which would follow West Broadway, the Burlington Northern Santa Fe (BNSF) rail corridor, and Olson Memorial Highway and/or Penn Avenue, would include tracks, stations and support facilities, as well as transit service for LRT and connecting bus routes.

Bus Rapid Transit (BRT) Alternative. The BRT alternative would include a busway in its own dedicated space (guideway) with several stations between downtown Minneapolis and the Brooklyn Park area. This alternative, which would follow West Broadway, the BNSF rail corridor, and Olson Memorial Highway, would include all facilities associated with the construction and operation of BRT, including right-of-way, travel lanes, stations, and support facilities, as well as transit service for BRT and connecting bus routes.

Possible Effects

The purpose of the EIS process is to study, in a public setting, the potentially significant effects of the proposed project on the quality of the human environment. Primary areas of investigation for this project include, but are not limited to: Land use and economic development; land acquisition, displacements, and relocation; neighborhood cohesion and environmental justice; historic resources; parklands; visual and aesthetic qualities; air quality; water quality, wetlands, and floodplains; wildlife/endangered species and ecosystems; noise; vibration; hazardous materials affected by demolition and construction activities; traffic circulation and transportation linkages; parking; pedestrian and bicycle connections; energy use; and safety and security. Effects will be evaluated in the context of both short-term construction and long-term operation of the proposed project. Direct project effects as well as indirect and cumulative effects on the environment will be addressed. The environmental analysis may reveal that the proposed project will not affect, or affect substantially, many of the primary areas of investigation. However, if any adverse impacts are identified, measures to avoid, minimize, or mitigate those adverse effects will be proposed.

Procedures for Public and Agency Involvement

The regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for public involvement in the EIS process. Section 6002 of SAFETEA–LU (23 U.S.C. 139) requires that FTA, HCRRA, and the Metropolitan Council do the following: (1) Extend an invitation to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on) the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other federal and non-federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA, HCRRA, and the Metropolitan Council will not be able to identify all federal and non-federal agencies and Native American tribes that may have such an interest. Any federal or non-federal agency or Native American tribes interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program for public and agency involvement will be developed for the project and posted on the project Web site. The public involvement program includes a full range of activities including maintaining the project Web site, and outreach to local officials, community and civic groups, and the general public.

Paperwork Reduction

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received before the document is printed, at the latest, FTA and its grantees will distribute only the executive summary of environmental documents in printed form together with a compact disc (CD) that contains the complete environmental document. A complete

printed set of the environmental documents will be available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document will also be available on the grantee's Web site.

Other

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508), and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771).

Issued on: January 5, 2012.

Marisol Simon,

Regional Administrator, FTA, Region V.

[FR Doc. 2012–264 Filed 1–9–12; 8:45 am]

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Part II

Department of Health and Human Services

Office of the Secretary

45 CFR Parts 160 and 162
Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 162

[CMS–0024–IFC]

RIN 0938–AQ11

Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements parts of section 1104 of the Affordable Care Act which requires the adoption of a standard for electronic funds transfers (EFT). It defines EFT and explains how the adopted standards support and facilitate health care EFT transmissions.

DATES: *Effective Date:* These regulations are effective on January 10, 2012. The incorporation by reference of the publications listed in this interim final rule with comment period is approved by the Director of the Office of the Federal Register January 10, 2012.

Compliance Date: The compliance date for this regulation is January 1, 2014.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below on or before March 12, 2012.

ADDRESSES: In commenting, please refer to file code CMS–0024–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0024–IFC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0024–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Matthew Albright (410) 786–2546. Denise Buenning (410) 786–6711.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–(800) 743–3951.

I. Background

A. Statutory and Regulatory Background

The background discussion below presents a partial statutory and regulatory history related only to the statutory provisions and regulations that are important and relevant for purposes of this interim final rule with comment period. For further information about electronic data interchange (EDI), the complete statutory background, and the regulatory history, see the August 22, 2008 (73 FR 49742) proposed rule entitled ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards''.

1. The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Congress addressed the need for a consistent framework for electronic health care transactions and other administrative simplification issues through the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (Pub. L. 104–191), enacted on August 21, 1996. HIPAA amended the Social Security Act (hereinafter referred to as the Act) by adding Part C—Administrative Simplification—to Title XI of the Act, requiring the Secretary of the Department of Health and Human Services (DHHS) (hereinafter referred to as the Secretary) to adopt standards for certain transactions to enable health information to be exchanged more efficiently and to achieve greater uniformity in the transmission of health information.

In the August 17, 2000 **Federal Register** (65 FR 50312), we published a final rule entitled ''Health Insurance Reform: Standards for Electronic Transactions'' (hereinafter referred to as the Transactions and Code Sets final rule). That rule implemented some of the HIPAA Administrative Simplification requirements by adopting standards for electronic health care transactions developed by standard setting organizations (SSOs) and medical code sets to be used in those transactions. We adopted Accredited Standards Committee (ASC) X12 Version 4010 standards and the National Council for Prescription Drug Programs (NCPDP) Telecommunication Version 5.1 standard, which are specified at 45 CFR part 162, subparts K through R. Section 1172(a) of the Act states that ''[a]ny standard adopted

under [HIPAA] shall apply, in whole or in part, to * * * (1) A health plan. (2) A health care clearinghouse. (3) A health care provider who transmits any health information in electronic form in connection with a [HIPAA transaction].'' These entities are referred to as covered entities.

In the January 16, 2009 **Federal Register**, we published a final rule entitled, ''Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards'' (74 FR 3296) (hereinafter referred to as the Modifications final rule) that, among other things, adopted updated versions of the standards, ASC X12 Version 5010 (hereinafter referred to as Version 5010) and NCPDP Telecommunication Standard Implementation Guide Version D.0 (hereinafter referred to as Version D.0) and equivalent Batch Standard Implementation Guide, Version 1, Release 2 (hereinafter referred to as Version 1.2) for the electronic health care transactions originally adopted in the Transactions and Code Sets final rule. Covered entities are required to comply with Version 5010 and Version D.0 on January 1, 2012.

Table 1 summarizes the full set of transaction standards adopted in the Transactions and Code Sets final rule and as modified in the Modifications final rule. The table uses abbreviations of the standards and the names by which the transactions are commonly referred as a point of reference for the reader. The official nomenclature and titles of the standards and transactions related to the provisions of this interim final rule with comment period are provided later in the narrative of this preamble.

TABLE 1—CURRENT ADOPTED STANDARDS FOR HIPAA TRANSACTIONS

Standard	Transaction
ASC X12 837 D	Health care claims—Dental.
ASC X12 837 P	Health care claims—Professional.
ASC X12 837 I	Health care claims—Institutional.
NCPDP D.0 and Version 1.2	Health care claims—Retail pharmacy drugs (telecommunication and batch standards).
ASC X12 837 P, NCPDP D.0 and Version 1.2 (batch)	Health care claims—Retail pharmacy supplies and professional services.
NCPDP D.0 and Version 1.2 (batch)	Coordination of Benefits—Retail pharmacy drugs.
ASC X12 837 D	Coordination of Benefits—Dental.
ASC X12 837 P	Coordination of Benefits—Professional.
ASC X12 837 I	Coordination of Benefits—Institutional.
ASC X12 270/271	Eligibility for a health plan (request and response)—Dental, professional, and institutional.
NCPDP D.0 and Version 1.2 (batch)	Eligibility for a health plan (request and response)—Retail pharmacy drugs.
ASC X12 276/277	Health care claim status (request and response).
ASC X12 834	Enrollment and disenrollment in a health plan.
ASC X12 835	Health care payment and remittance advice.
ASC X12 820	Health plan premium payment.
ASC X12 278	Referral certification and authorization (request and response).
NCPDP D.0 and Version 1.2 (batch)	Referral certification and authorization (request and response)—Retail pharmacy drugs.
NCPDP 3.0	Medicaid pharmacy subrogation (batch standard).

In the July 8, 2011 **Federal Register** (76 FR 40458), we published an interim final rule with comment period, ''Administrative Simplification: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions'' (hereinafter referred to as the Eligibility and Claim Status Operating Rules IFC). That rule adopted operating rules for two HIPAA transactions: (1) Eligibility for a health plan; and (2) health care claim status. The Eligibility and Claim Status Operating Rules IFC also defined operating rules and described their relationship to standards.

In general, the transaction standards adopted under HIPAA enable electronic data interchange using a common interchange structure, thus minimizing the industry's reliance on multiple formats. The standards significantly decrease administrative burden on covered entities by creating greater uniformity in data exchange and reduce the amount of paper forms needed for transmitting data which remains an obstacle to achieving greater health care industry administrative simplification.

Section 1173(a) of the Act requires the Secretary to adopt standards for a number of financial and administrative transactions, as well as data elements for those transactions, to enable health information to be exchanged electronically. Section 1172(b) of the Act requires that a standard adopted under HIPAA ''be consistent with the objective of reducing the administrative costs of providing and paying for health care.''

Under section 1172(c)(2)(B) of the Act, if no standard setting organization (SSO) has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt, then the Secretary may adopt a standard relying upon recommendations of the National Committee on Vital and Health Statistics (NCVHS), in consultation with the organizations referred to in section 1172(c)(3)(B) of the Act, and appropriate Federal and State agencies and private organizations.

2. Electronic Funds Transfers (EFT) and the Affordable Care Act

Section 1104(b)(2)(A) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) (hereinafter referred to as the Affordable Care Act) amended section 1173(a)(2) of the Act by adding the electronic funds transfers (hereinafter referred to as EFT) transaction to the list of electronic health care transactions for which the Secretary must adopt a standard under HIPAA. Section 1104(c)(2) of the Affordable Care Act requires the Secretary to promulgate a final rule to establish an EFT standard, and authorizes the Secretary to do so by an interim final rule. That section further requires the standard to be adopted by January 1, 2012, in a manner ensuring that it is effective by January 1, 2014.

Sections 1104(b)(2)(B) and 10109(a)(1)(B) of the Affordable Care

Act also amended section 1173 of the Act by adding sections 1173(a)(4) and (5), respectively, to provide for new financial and administrative transactions requirements. Section 1173(a)(4) guides us in adopting standards in this interim final rule with comment period and associated operating rules (which we will adopt in future rulemaking) for the EFT transaction, particularly the following requirements: First, such standards and associated operating rules must ''be comprehensive, requiring minimal augmentation by paper or other communications;'' second, the standards and associated operating rules must ''describe all data elements (including reason and remark codes) in unambiguous terms [and] require that such data elements be required or conditioned upon set values in other fields, and prohibit additional conditions (except where necessary to implement State or Federal law, or to protect against fraud and abuse);'' and third, the Secretary must ''seek to reduce the number and complexity of forms (including paper and electronic) and data entry required by patients and providers.''

B. Electronic Funds Transfers (EFT): General Background

While industry and consumers use the term EFT in a number of different ways, the definition of EFT in section 31001(x) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) is particularly useful in this general background discussion because it includes a broad spectrum of transmission vehicles and terms that are relevant to our discussion of EFT in this interim final rule with comment period. The Debt Collection Improvement Act defines an EFT as ''any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House (ACH) transfers, Fedwire transfers, transfers made at automatic teller machines (ATMs), and point-of-sale terminals.''

Because we are adopting standards in this interim final rule with comment period that apply only to transmissions of data over the ACH Network, we focus our discussion on EFT that are transmitted over the ACH Network.

1. The Automated Clearing House (ACH) Network

The ACH Network is the ''pipeline'' through which many EFT travel; it is a processing and delivery system for EFT that uses nationwide telecommunications networks. Consumers use the ACH Network when, for example, they have paychecks directly deposited in their accounts, or pay bills electronically by having funds withdrawn automatically from their accounts.

In the majority of cases, when an EFT is used by a health plan to pay health care claims, it is transmitted through the ACH Network. However, payments and debits through the ACH Network represent only one category of EFT; some EFT, including some health care claim payments, can be made outside of the ACH Network. One example of an EFT made outside of the ACH Network is a transfer of funds made through the Federal Reserve Wire Network, hereinafter referred to as Fedwire. This is akin in the consumer universe to a wire transfer of funds made via Western Union, for example, except that the Fedwire is an electronic transfer system developed and maintained by the Federal Reserve System. Fedwire transfers on behalf of bank customers include funds used in the purchase or sale of government securities, deposits, and other large, time-sensitive payments.

The ACH initiative began in the early 1970s to explore payment alternatives to paper checks in response to the rapid growth in paper check volume. The establishment of the first ACH Network, Calwestern Automated Clearing House Association in California, led to the formation of similar groups around the country. Agreements were made between these ACH associations and regional Federal Reserve Banks to provide facilities, equipment, and staff to operate regional automatic clearing house networks. The National Automated Clearing House Association (NACHA) was founded in 1974 to centrally coordinate the local ACH associations and to administer, develop, and enforce operating rules and management practices for the ACH Network. In 1978, in a joint effort between NACHA and the Federal Reserve System, regional ACHs were linked electronically, with NACHA serving as the national ACH Network's administrator.

NACHA develops rules, published in *NACHA Operating Rules & Guidelines—A Complete Guide to the Rules Governing the ACH Network* (hereinafter referred to as the NACHA Operating Rules & Guidelines, available at *https://www.nacha.org*), that govern the ACH Network. The NACHA Operating Rules & Guidelines is an annual publication divided into two sections, the NACHA Operating Rules and the NACHA Operating Guidelines. The NACHA Operating Rules describes NACHA's legal framework for the ACH Network and provides NACHA's specifications for electronic transmissions conducted through the ACH Network. Electronic transmissions conducted through the ACH Network include money transfers, money withdrawals, and non-monetary transactions, and are sent in electronic formats called ACH Files, sometimes referred to as ACH formats, NACHA formats, ACH Entry Classes, or ACH payment applications. In the 2011 NACHA Operating Rules, there are implementation specifications for sixteen different types or ''classes'' of ACH Files that can be used for business and consumer transactions over the ACH Network.

The NACHA Operating Guidelines provides guidance on implementing the NACHA Operating Rules through narrative, diagrams, illustrations, and examples. The NACHA Operating Guidelines is organized by chapter according to the responsibilities of each of the participants in an ACH transaction and includes an overview of the different classes of ACH Files.

The Federal government is the single largest user of the ACH Network. The Debt Collection Improvement Act requires that all Federal payments made after January 1, 1999, other than payments required under the Internal Revenue Code of 1986, be made by EFT. Subsequent regulations implementing this act allowed for waivers and exceptions. In 31 CFR 210, the United States Department of the Treasury formally adopted the NACHA Operating Rules & Guidelines for the Federal government's EFT payments made through the ACH Network, including Federal tax collections, tax refund payments, and Social Security and other benefit payments made by direct deposit.

2. The Payment Flow Through the ACH Network

To give context to how EFT are used in the health care industry, we consider here how businesses pay one another by transferring funds and sending related payment information through the ACH Network. We can simplify understanding of the ACH Network payment process by dividing the transaction flow of the EFT into three chronological stages, each of which

includes a separate electronic transmission of information (see Illustration A and Table 2).

a. Stage 1 Payment Initiation

In the first stage, the business or entity that is making the payment orders, instructs or authorizes its financial institution to make an EFT payment through the ACH Network on its behalf. This electronic transmission from a business to its financial institution is sometimes referred to as ''payment initiation,'' ''payment instructions,'' ''payment authorization,'' or ''originating an entry.''

To order, instruct or authorize a financial institution to make an EFT payment through the ACH Network, the business or entity that is making the payment, designated as an ''Originator'' in the NACHA Operating Rules & Guidelines, must provide its financial institution, called the ''Originating Depository Financial Institution'' or ODFI, with payment information similar to information that one would find on a paper check. This payment information includes the amount being paid, identification of the payer and payee, bank accounts of the payer and payee, routing information, and the date of the payment.

An Originator may send this payment information formatted in an ACH File in accordance with the NACHA Operating Rules & Guidelines. The Originator may also send the data in a non-ACH File, such as an ASC X12 820, an ASC X12 835, a proprietary file, or a flat file, and the ODFI will format the data into an ACH File as a service to the Originator (Table 2). Regardless of the format that an Originator uses to transmit payment information to the ODFI, we hereinafter refer to the transmission in this stage in the ACH payment flow as the Stage 1 Payment Initiation.

b. Stage 2 Transfer of Funds

In this stage, a number of separate interactions take place, but the end result is that funds from one account are moved to another account. First, the payment information that was sent from the Originator to the ODFI in the Stage 1 Payment Initiation travels from the ODFI to one or both of two ACH Operators: The Federal Reserve, run by the Federal government, or The Clearing House, a private company. These ACH Operators then conduct the actual funds transfer. They sort and batch ACH Network transactions and, on the payment date, debit the ODFI and credit the financial institution of the business that is being paid. The financial institution of the business that is being paid is called the ''Receiving Depository Financial Institution'' or RDFI. The final step in this stage is that the RDFI credits the account of the business or entity that is being paid, called the Receiver.

In Stage 2, the actual transfer of funds or ''settlement,'' is governed by the NACHA Operating Rules & Guidelines, as well as Federal statutes and regulations. In contrast to the Stage 1 Payment Initiation which allows for a variety of non-ACH File options, the ODFI must transmit the payment and payment information through the ACH Network using an ACH File.

We hereinafter refer to the transmission in this stage of the EFT transaction as the Stage 2 Transfer of Funds.

c. Stage 3 Deposit Notification

In this final stage, the RDFI transmits information to the Receiver that indicates that the payment has been deposited in the Receiver's account. The RDFI can do this proactively by notifying the Receiver at the time the funds are deposited, or the RDFI can simply post the payment to the Receiver's account and it will appear on the Receiver's account summary. The NACHA Operating Rules & Guidelines does not require an RDFI to notify a Receiver that the RDFI has received the ACH File at the time of receipt, unless the RDFI has an agreement with the Receiver that contains a request to do so either automatically when a Receiver receives any deposit via EFT, or episodically if the Receiver specifically requests such notification on a case-by-case basis for any given EFT deposit.

The notification data can be transmitted to the Receiver in any format the RDFI and Receiver agree upon (Table 2). We hereinafter refer to the transmission in this stage of the EFT transaction as the Stage 3 Deposit Notification.

3. Addenda Records

Two types of ACH Files can be used for domestic business-to-business payments in the Stage 2 Transfer of Funds: The Corporate Credit or Debit Entry (CCD), sometimes referred to as the Cash Concentration/Disbursement format, and the Corporate Trade Exchange Entry (CTX) (Table 2, Column 2). The difference between the two is that the CCD is capable of including an ''Addenda Record'' that holds up to 80 characters of remittance or additional payment information supplied by an Originator, while the CTX has multiple Addenda Records that together can hold nearly 800,000 characters of remittance or additional payment information supplied by an Originator.

An Originator has the option of conveying remittance or additional payment information in the Addenda Records of the CCD or the CTX so that payment and remittance or additional payment information can move together electronically through the ACH Network. This remittance or additional payment information can be any data that the Originator thinks the Receiver may need to know, such as a tracking or invoice number, as long as the data relates to the associated EFT payment and the data stays within formatting limitations described in the NACHA Operating Rules & Guidelines.

In the Stage 1 Payment Initiation, the remittance or additional payment information can be transmitted to the ODFI by the Originator in the same file and in the same formats that can be used to transmit the payment information; that is, in a flat file, an X12 file (using an ASC X12 835 or 820 standard), a proprietary file (most often proprietary to the financial institution), or an ACH File (CCD or CTX), for which implementation and standards are developed and maintained by NACHA (see Table 2). Because it is ''enveloped'' in an ACH File, ideally the remittance or additional payment information in the Addenda Record is transmitted from the Originator to the ODFI in the Stage 1 Payment Initiation, through the ACH Network to the RDFI in the Stage 2 Transfer of Funds, then finally to the Receiver in the Stage 3 Deposit Notification.

Before the ODFI enters the ACH File into the ACH Network to initiate the Stage 2 Transfer of Funds, NACHA Operating Rules & Guidelines requires that the data in the Addenda Record of an ACH File be formatted according to any ASC X12 transaction set (the data envelope that consists of a header, detail and summary areas) or ASC X12 data segment (a grouping of data elements which may be mandatory, optional or relational), or in a NACHA-endorsed banking convention. The Originator may format the Addenda Record according to ASC X12 requirements and transmit it as part of the Stage 1 Payment Initiation, or the Originator may send the ODFI unformatted data in the Stage 1 Payment Initiation and the ODFI will format the data into an ASC X12 format as a service to the Originator. The ODFI then transmits the data in either the CCD or the CTX through the ACH Network to the RDFI as a Stage 2 Funds Transfer.

When a CCD includes an Addenda Record, it is referred to as a ''CCD plus Addenda Record'' or ''CCD+.'' Hereinafter, we refer to the CCD with Addenda Record as the CCD+Addenda.

We refer to the CTX with Addenda Records simply as the CTX.

For the Stage 3 Deposit Notification, the NACHA Operating Rules & Guidelines requires that, upon request of the Receiver, an RDFI provide the Receiver all payment-related information contained within the Addenda Records transmitted with a CCD or CTX. If so requested, the data contained in the Addenda Record(s) are provided by the RDFI to the Receiver in a format agreed to by the Receiver and the RDFI (See Table 2).

ILLUSTRATION A: STAGES IN A BUSINESS-TO-BUSINESS PAYMENT MADE THROUGH THE ACH NETWORK

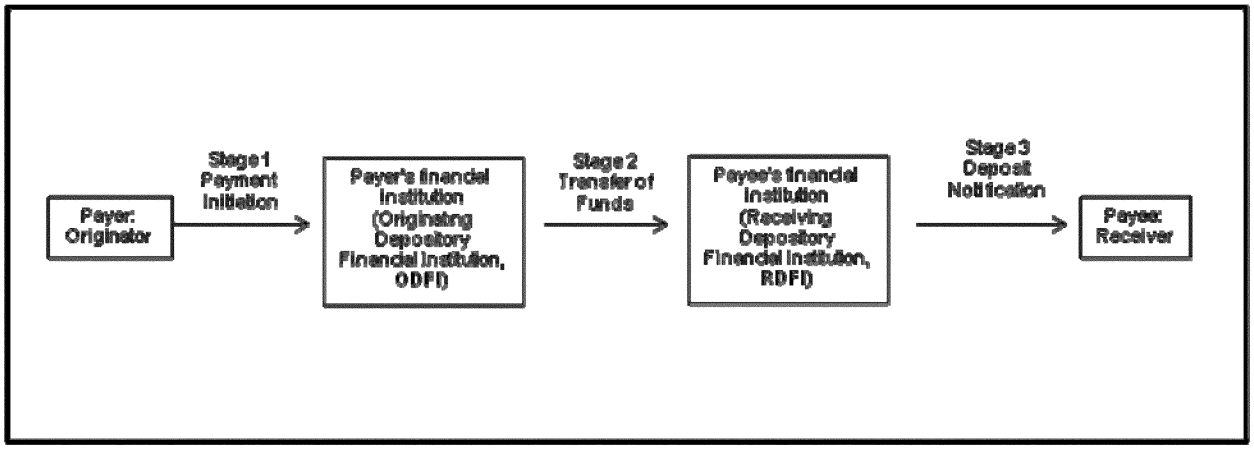


TABLE 2—EFT FORMATS FOR BUSINESS-TO-BUSINESS PAYMENTS THROUGH THE ACH NETWORK

Transmission stage	Electronic format used in transmission
Stage 1 Payment Initiation.	
Payment Information transmission from Originator to ODFI.	• Non-ACH file such as a proprietary file, a flat file, an ASC X12 835 or 820 format, or • ACH File (CCD or CTX). Remittance or additional payment information for Addenda Record(s) can be transmitted in any of the formats listed in the two bullets above.
Stage 2 Transfer of Funds.	
Payment Information transmission from ODFI to RDFI.	• Standard required by NACHA: ACH File (CCD or CTX). Addenda Record(s) must be in ANSI ASC X12 transaction set or data segment format or NACHA-endorsed banking convention.
Stage 3 Deposit Notification.	
Payment Information transmission from RDFI to Receiver.	• Format to be agreed upon by Receiver and RDFI (but RDFI is not obligated to proactively provide payment information unless requested by the Receiver).

4. Advantages and Disadvantages of EFT

According to the 2010 AFP Electronic Payments: Report of Survey Results, produced by the Association for Financial Professionals (AFP) and underwritten by J.P. Morgan,[1] businesses that use EFT cite three main benefits:

• *Cost savings:* Savings derive from cost avoidance of printing checks, purchasing and stuffing envelopes, and manually depositing checks;

• *Fraud control:* The above-cited AFP survey found that 90 percent of organizations that experienced payment fraud in 2008 were victims of paper check fraud, while only 7 percent of organizations that experienced payment fraud were victims of EFT fraud; and

• *Improved cash flow and cash forecasting:* Forty percent of the AFP's 500 survey respondents reported improved cash forecasting as a result of EFT payments.

In terms of disadvantages, some businesses find it expensive or inefficient to overlay the ACH Network payment process onto existing technology, business systems, and processes originally designed to process paper checks. For instance, for many businesses, the payment system and process is separate from the accounts payable/receivable system and electronic data interchange (EDI) systems, and the business cannot send or receive automated remittance information together with electronic payments without significant investment and organizational change.[2]

C. Payment of Health Care Claims via EFT

To understand the context in which an EFT is used to pay for health care claims, it is necessary to look at the closely-related transmission of health care remittance advice.

A health plan rarely pays a provider the exact amount a provider bills the health plan for health care claims. A health plan adjusts the claim charges based on contract agreements, secondary payers, benefit coverage, expected co-pays and co-insurance, and

[1] *http://www.afponline.org/pub/res/topics/topics_pay.htm.*

[2] 2010 AFP Electronic Payments: Report of Survey Results.

so on. These adjustments are described in the remittance advice. The health care remittance advice is somewhat analogous to an employee's salary paystub which describes the amount the employee is being paid, the hours worked, and an explanation of any adjustments or deductions that are being made to an employee's salary payment.

The remittance advice has traditionally been in paper form, sent by mail to the provider. However, the use of electronic remittance advice (ERA) is growing.

The Transactions and Code Sets final rule adopted a definition for the health care payment and remittance advice transaction. The definition, found in 45 CFR 162.1601, includes descriptions for both health care payment and ERA.

The transmission described in § 162.1601(a), hereinafter referred to as the transmission of ''health care payment/processing information,'' is primarily a financial transmission. The transmission described in § 162.1601(b) is the ERA—an explanation of the health care payment or an explanation of why there is no payment for the claim. The ERA includes detailed identifiable health information.

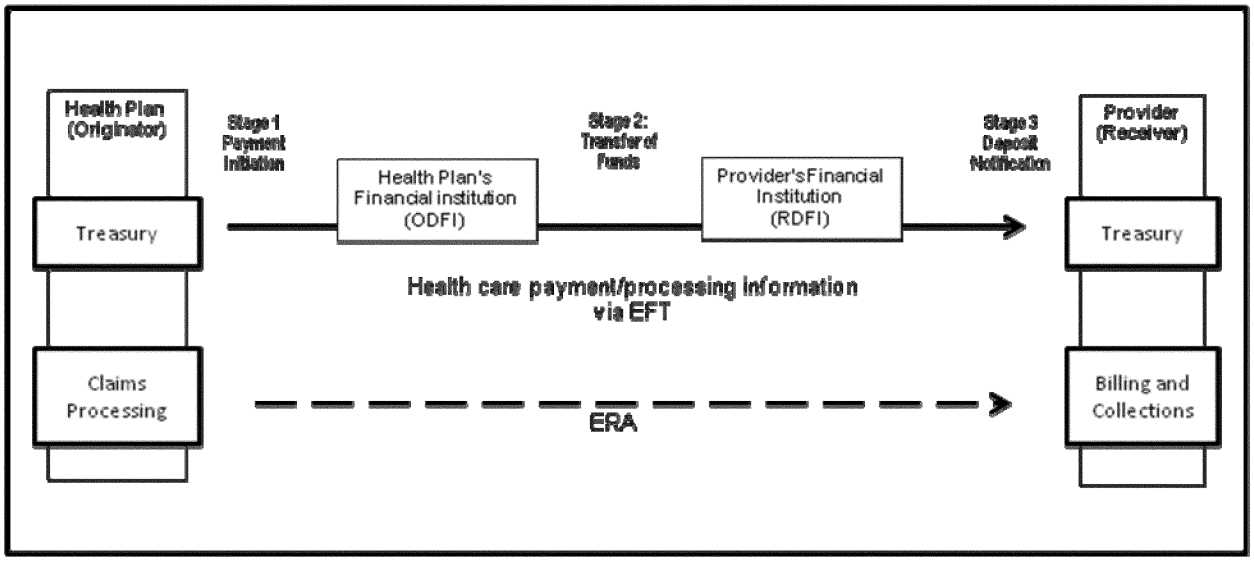
With few exceptions, the ERA and the health care payment/processing information are sent in different electronic formats through different networks, contain different data that have different business uses, and are often received by the health care provider at different times.

The health care payment/processing information is transmitted via EFT from the health plan's treasury system. It is then processed by financial institutions, and ultimately entered into the health care provider's treasury system. Currently, the health care payment/processing information is generally transmitted in a CCD through the ACH Network, though there are instances when other forms of EFT such as Fedwire are used. The path of the health care payment/processing information through the ACH Network from health plan to provider is represented in Illustration B by the solid arrow.

In contrast, the ERA is traditionally sent from the health plan's claims processing system and processed through the provider's billing and collection system. The path of the ERA from health plan to provider is represented in Illustration B by the dashed arrow.

When both the health care payment/processing information and the ERA to which it corresponds arrive at the health care provider (often at different times), the two transmissions must be reassociated or matched back together by the provider; that is, the provider must associate the ERA with the payment that it describes. This process is referred to as ''reassociation.'' Ideally, reassociation of the ERA with the health care payment/processing information is automated through the provider's practice management system. In practice, time-consuming manual reassociation by administrative staff is often required.

ILLUSTRATION B: PATH OF ERA AND EFT IN HEALTHCARE CONTEXT



It is technically possible for the health care payment/processing information and ERA to be combined and sent via EFT through the ACH Network using the CTX. Given the amount of data the CTX can hold in its Addenda Records, all of the ERA can be ''enveloped'' in a single ACH File and transmitted through the ACH Network. This allows both the health care payment/processing information and ERA to be transmitted as a ''package'' through the same network and to be received in the same ''package'' by the health care provider. Theoretically, the provider can avoid the step of reassociating the ERA with the health care payment/processing information because the ERA and health care payment/processing information are transmitted together via EFT.

However, to our knowledge, the CTX is infrequently, if ever, used by health plans for the transmission of both ERA and health care payment/processing information to pay for health care claims. It appears that there are at least two reasons why the CTX is not used: First, most health plans and health care providers are probably not technically capable of processing the CTX at this time. As noted in this section, the transmission of health care payment/processing information and the ERA are historically sent by health plans and received by health care providers from two different systems through two different processes (Illustration B). It would entail a change in systems and workflow to integrate the two systems and processes, both for the health plans that send these two transmissions and

for the health care providers that receive them.

Second, ERA contains protected health information (PHI), as defined at 45 CFR 160.103, and some in the financial industry are reluctant to be subject to HIPAA's privacy and security requirements with respect to such information. On the other side, providers and payers are reluctant to send PHI through the ACH network without assurances that the PHI is adequately protected under HIPAA.

The Transactions and Code Sets final rule adopted the ASC X12 835 TR3 (hereinafter referred to as the X12 835 TR3) as the standard for the health care payment and remittance advice transaction. As noted, the health care payment and remittance advice transaction includes two transmissions, the transmission of health care payment/processing information, and ERA. The X12 835 TR3 includes comprehensive implementation specifications for the ERA, but has less comprehensive ''data use'' instructions for transmitting health care payment/processing information. For example:

- According to the X12 835 TR3, health care payment/processing information may be sent through the mail by paper check or via EFT. If transmitted via EFT, the health care payment/processing information can be transmitted by wire or through the ACH Network.
- The X12 835 TR3 does not require a single standard format for Stage 1 Payment Initiation. According to the X12 835 TR3, proprietary, ACH, or ASC X12 data formats can be used in the Stage 1 Payment Initiation (X12 835 TR3, Table 1.1, *http://www.x12.org*).

D. The National Committee on Vital and Health Statistics (NCVHS): December 2010 Hearings on EFT

The NCVHS was established by Congress to serve as an advisory body to the Secretary on health data, statistics, and national health information policy, and has been assigned a significant role in the Secretary's adoption of standards, code sets, and operating rules under HIPAA.

On December 3, 2010, the NCVHS Subcommittee on Standards held a hearing entitled ''Administrative Simplification under the Patient Protection and Affordable Care Act Standards and Operating Rules for Electronic Funds Transfer (EFT) and Remittance Advice (RA)'' (for agenda and testimony, see *http://www.ncvhs.hhs.gov*). The NCVHS engaged in a comprehensive review of potential standards and operating rules for the EFT transaction, as well as a review of standard setting organizations and operating rule authoring entities, for purposes of making a recommendation to the Secretary as to whether such standards and operating rules should be adopted. The NCVHS hearing consisted of a full day of public testimony with participation by stakeholders representing a cross section of the health care industry, including health plans, health care provider organizations, health care clearinghouses, retail pharmacy industry representatives, standards developers, professional associations, representatives of Federal and State health plans, the Workgroup for Electronic Data Interchange (WEDI), the banking industry, and potential standard setting organizations (also known as standards development organizations or SDOs) for EFT standards and authoring entities for operating rules. These entities included the Council for Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE); the Accredited Standards Committee (ASC) X12; the National Automated Clearing House Association (NACHA); and the National Council for Prescription Drug Programs (NCPDP).

The testimony, both written and verbal, described many aspects and issues of the health care payment and remittance advice transaction. Testifiers described the advantages to using EFT to pay health care claims, similar to the advantages that are outlined in section I.B.4. of this interim final rule with comment period. Chief among these advantages was the savings in time and money for health plans and health care providers that EFT affords. Testifiers presented a number of case studies to illustrate these benefits. Testifiers also presented a number of obstacles to greater EFT use in health care. We refer the reader to the testimonies posted to the NCVHS Web site at *http://www.ncvhs.hhs.gov* for a more comprehensive discussion of the issues.

We summarize here a number of major obstacles for health care providers to adopt EFT, as identified by NCVHS testifiers and subsequent research, including: the administratively difficult enrollment process to accept EFT for health care claim payments; the time lag between receipt of the health care payment/processing information and the arrival of the ERA to the provider; and the problems regarding reassociation of the ERA with the EFT.

1. Enrollment

Health care providers must undertake a labor- and paper-intensive enrollment process in order to receive health care claim payments via EFT through the ACH Network from each of the health plans whom they bill. Each health plan has a different enrollment process. The health care provider must access the enrollment form and the form's instructions, which is sometimes difficult to find on a health plan's web site. Each health plan requires a different form to be filled out that is unique to that health plan. In the majority of cases, these forms are 3 to 18 pages that must be filled out manually, and each health plan requires different information (in some cases, a voided check or bank note) and signature requirements on the form. The health care provider must also discuss the options in accepting EFT and the arrangement for deposit notification with its financial institution. The health plans' enrollment forms must be resubmitted when a health care provider changes bank accounts or financial institutions, as is reportedly done regularly, or when there is a change in a provider's staff such that an authorizing signature on the EFT enrollment form must be changed. Finally, the avenues of submission of the enrollment forms differ from health plan to health plan: Some health plans may require a telephone call to an account representative in order to complete enrollment, while others may require the forms to be emailed, faxed, or mailed.

If a health care provider submits claims to twenty or more health plans, then the enrollment and maintenance of the enrollment data for EFT payments with the health plans reportedly becomes onerous for the provider. If a health care provider decides to pursue EFT at all, it is likely the provider will enroll only with those health plans that process significant numbers of the provider's claims to make the EFT worth the provider's time and effort to enroll.

2. Synchronization of EFT With ERA

According to testimony, another barrier for health care providers to the use of EFT for health care claim payments is that the ERA arrives at a different time than the associated health care payment/processing information that is transmitted via EFT. This is because, as described in section I.C. of this interim final rule with comment period, with few exceptions, the ERA is transmitted separately from the health care payment/processing information, and the two transmissions often arrive on different days or even different weeks. Consequently, if the ERA arrives first, it will describe a deposit that will

be made in a health care provider's account sometime in the future, so the provider cannot process the ERA until the health care payment/processing information is transmitted. Or, if the transmission of payment/processing information arrives first, multiple deposits may be made into the health care provider's account without the provider having the corresponding ERA that describes the claims for which the payments are being made. Both of these circumstances create a situation where the accounts receivable process for the provider requires costly manual intervention and oversight.

3. Reassociation and the Transmission of the Trace Number Segment (TRN)

Another barrier for health care providers to the use of EFT for health care claim payments is the difficulty in matching the health care payment/processing information with its associated ERA so that providers can post payments properly in their accounting systems. Because the two transmissions usually travel separately, the ERA must ultimately be reassociated with the health care payment/processing information transmitted via EFT when the two separate transmissions are received by the health care provider.

The trace number segment, hereinafter referred to as the TRN Segment, is a type of tracking code for ERA and the health care payment/processing information transmitted via EFT. The TRN Segment's implementation specifications are included in the X12 835 TR3. Ideally, the TRN Segment within a specific ERA is duplicated in the health care payment/processing information transmitted via EFT. Specifically, the TRN Segment should be duplicated in the Addenda Record of the CCD+Addenda. After the health care payment/processing information is transmitted with the TRN Segment to a health care provider, the provider's practice management system can use the TRN Segment to automatically reassociate the health care payment/processing information with its corresponding ERA and post the payment in the provider's accounts receivable system.

At the December 2010 NCVHS hearing, industry testifiers noted that a duplicate of the TRN Segment in the ERA is not always conveyed to the health care provider within the Addenda Record of the CCD+Addenda as a part of normal business operations. Therefore, automatic reassociation becomes difficult if not impossible for the health care provider receiving the transaction. Testifiers gave a number of reasons why the TRN Segment is not conveyed to the health care provider, as follows:

- In the Stage 1 Payment Initiation, a health plan may not include an Addenda Record with the CCD or may not authorize its financial institution to include an Addenda Record with the CCD.
- A health plan may include an Addenda Record with the CCD, or instruct its financial institution to include an Addenda Record with the CCD, but may not transmit the proper data elements, may fail to place the data elements in the order specified in the X12 835 TR3, or may include its own proprietary trace number that is different from the TRN Segment included in the associated ERA.
- A health plan may leave out a particular data element, such as the Originating Company Identifier (TRN03), which is part of the TRN Segment specified in the X12 835 TR3, or use a different data element than that used in the associated ERA.
- A health plan may include a TRN Segment in its Stage 1 Payment Initiation but the format that the health plan uses to transmit this data does not make it clear to the financial institution where the TRN Segment must be placed in the CCD+Addenda. The financial institution then puts the TRN Segment in the wrong field or removes it altogether.
- Per NACHA Operating Rules & Guidelines, financial institutions must put their own ACH ''trace number,'' which is different from the TRN Segment, in a CCD in a field outside of the Addenda Record, and there may be confusion among the parties between the financial institution's trace number and the TRN Segment in the Addenda Record that needs to match its associated ERA.
- The TRN Segment is included in the Addenda Record of the CCD+Addenda that a health plan's financial institution transmits through the ACH Network to a health care provider's financial institution, but the provider's financial institution may not communicate the TRN Segment to the provider through the Stage 3 Deposit Notification. This is because, according to the NACHA Operating Rules & Guidelines, the Receiver must proactively request that the information in the Addenda Record be transmitted (NACHA Guidelines, Section III, Chapter 24). Also, a financial institution may translate the data (the TRN Segment) contained in the Addenda Record of the CCD+Addenda into its own proprietary format to transmit to the health care provider. When it is reformatted, the TRN Segment may be altered such that it no longer matches the TRN Segment in the ERA or cannot be automatically reassociated by the provider's practice management system.

In summary, the obstacles to having a TRN Segment in the CCD+Addenda delivered to the health care provider may be categorized as to their occurrence in two stages of the EFT transmission. First, in the Stage 1 Payment Initiation transmission between the health plan and the health plan's financial institution, the TRN Segment may be entered in the wrong field, contain sequence errors, or be left out or removed. Second, the TRN Segment may travel successfully through the ACH Network in the Addenda Record of the CCD+Addenda but, in the Stage 3 Deposit Notification, the health care provider may not receive the TRN Segment from the financial institution in a format that allows for automated reassociation by the health care provider's practice management system.

E. The NCVHS Recommendation to the Secretary

On February 17, 2011, following the December 2010 NCVHS Subcommittee on Standards hearing, the NCVHS sent a letter to the Secretary with its recommendations for, among other things, adoption of a ''health care EFT'' standard *(http://www.ncvhs.hhs.gov*). From that letter, we reference the specific recommendations of the NCVHS for the identification and adoption of a standard to be used for payment of health care claims via EFT:

1.1 Define health care EFT transaction as the electronic message used by health plans to order, instruct or authorize a depository financial institution (DFI) to electronically transfer funds through the ACH network from one account to another.

1.2 Define health care EFT standard as the format and content required for health plans to perform an EFT transaction.

1.3 Adopt as the standard format for the health care EFT standard the NACHA CCD+ format, in conformance with the NACHA Operating Rules.

1.4 Identify NACHA as the standards development organization for maintenance of the health care EFT standard.

1.5 Adopt as the implementation specification for the content for the addenda in the CCD+ the content requirements specified in the X12 835 TR3 REPORT (ASC X12/005010X221) particular to the CCD+.

1.6 Consider the implications of the fact that, as the result of the adoption of the healthcare EFT standard, some banks may become de facto healthcare clearinghouses as defined by HIPAA.

We agree with the spirit and intent of the NCVHS' recommendations to the

Secretary as relayed in the February 17, 2011 letter. In this interim final rule with comment period, we are adopting standards that reflect the NCVHS' recommendations, with some minor departures. In section II. of this interim final rule with comment period, we explain the reasons for the differences between the standards we are adopting and the NCVHS' recommendations for a standard for payment of health care claims via EFT.

II. Provisions of the Interim Final Rule With Comment Period

A. The Health Care Electronic Funds Transfers (EFT) and Remittance Advice Transaction

As previously described in section I.C. of this interim final rule with comment period, the health care payment and remittance advice transaction is defined at 45 CFR 162.1601 as either or both of two different types of information transmissions. We refer to the first transmission type, in § 162.1601(a), as the health care payment/processing information, and the second type of transmission, in § 162.1601(b), as the ERA.

As we have discussed, an EFT is an electronic transmission of payment/processing information. For example, in the CCD+Addenda file format, the EFT includes information about the transfer of funds such as the amount being paid, the name and identification of the payer and payee, bank accounts of the payer and payee, routing numbers, and the date of the payment. Using health care claims payments as an example, the CCD+Addenda may also include payment processing information such as a duplicate of the TRN Segment that is in the associated ERA. So, the EFT transaction is described already by part of the definition of a health care payment and remittance advice transaction at § 162.1601(a)—it is the transmission of health care payment, information about the transfer of funds, and payment processing information.

We considered creating a new subpart in 45 CFR that would define the EFT transaction separately from the transmission of ERA. However, we believe that dividing the health care payment and remittance advice transaction into two separate transactions, one that defines and adopts standards for the use of EFT to transmit payment/processing information for health care claims, and another that defines and adopts standards for ERA, could create the perception that the two are potentially unrelated transactions. Thus, we believe it is important that the transmission of health care payment/processing information, as described in § 162.1601(a) and the transmission of health care remittance advice as described in § 162.1601(b) be addressed as a set. In accordance with our decision to link the payment of health care claims via EFT and the ERA transactions by defining them and identifying the standards for them in the same regulatory provisions, we are changing the title of the health care payment and remittance advice transaction to the ''health care electronic funds transfers (EFT) and remittance advice'' transaction in § 162.1601 and § 162.1602. For the remainder of this interim final rule with comment period, we refer to the transmission of health care payment/processing information as described in § 162.1601(a) as the ''health care EFT.''

Next, the transaction at § 162.1601(a) is defined as a transmission ''from a health plan to a health care provider's financial institution.'' This interim final rule with comment period amends § 162.1601(a) to revise the recipient of the transmission of a health care EFT to be ''a health care provider'' instead of ''a health care provider's financial institution.'' We are making this change in the definition for the purpose of clarifying that the ultimate recipient of the health care EFT is not the financial institution, but the provider who requires the health care claim payment/processing information and in whose account the funds are deposited.

While the definition of the transaction at § 162.1601(a) is amended to reflect all stages of the transmission of a health care EFT from health plan to health care provider, we are not adopting standards in this interim final rule with comment period for every stage of the health care EFT transmission.

B. Definition of Stage 1 Payment Initiation

We are adding the definition of Stage 1 Payment Initiation to § 162.103. The Stage 1 Payment Initiation ''means a health plan's order, instruction, or authorization to its financial institution to make a health care claims payment using an electronic funds transfer (EFT) through the ACH Network.'' We have described the Stage 1 Payment Initiation broadly in section I.B.2. of this preamble, and define it specific to health care claim payments in regulation text. The definition clarifies that the health plan is the sender of the Stage 1 Payment Initiation, and the health plan's financial institution is the recipient of the Stage 1 Payment Initiation.

As we discuss later in this interim final rule with comment period, the standards we are adopting in this interim final rule with comment period are only for Stage 1 Payment Initiation of the health care EFT. We are not adopting standards for Stages 2 and 3 of the health care EFT.

C. Adoption of Standard for Stage 1 Payment Initiation: The NACHA Corporate Credit or Deposit Entry With Addenda Record (CCD+Addenda)

We are adopting the NACHA Corporate Credit or Deposit Entry with Addenda Record (CCD+Addenda) implementation specifications, as contained in the 2011 NACHA Operating Rules & Guidelines, as the standard for Stage 1 Payment Initiation. We are adopting only the specific chapter and appendices of the NACHA Operating Rules that include implementation specifications for the CCD+Addenda, and we are adopting this standard only for the Stage 1 Payment Initiation of the health care EFT (Table 3).

D. Adoption of Standard for the Data Content of the Addenda Record of the CCD+Addenda: The ASC X12 835 TRN Segment

In its February 17, 2011 letter, the NCVHS recommended that the Secretary ''adopt as the implementation specification for the content for the addenda in the CCD+, the content requirements specified in the X12 835 TR3 REPORT (ASCX12/005010X221) particular to the CCD+.'' In § 162.1602, we are adopting the X12 835 TR3 TRN Segment as the standard for the data content of the Addenda Record of the CCD.

The CCD Addenda Record can hold up to 80 characters. The NACHA Operating Rules & Guidelines requires that the data in the Addenda Record be formatted according to any ASC X12 transaction set or data segment, or in a NACHA endorsed banking convention. In order to standardize the data content of the CCD+, in § 162.1602, we are requiring health plans to input the X12 835 TRN Segment into the Addenda Record of the CCD+Addenda; specifically, the X12 835 TRN Segment must be placed in Field 3 of the Addenda Entry Record (''7 Record'') of a CCD. The TRN Segment implementation specifications are described in the X12 835 TR3: ''Section 2.4: Segment Detail, TRN Reassociation Trace Number.'' The TRN Segment includes, consecutively, the Trace Type Code (TRN01), the Reference Identification (TRN02), the Originating Company Identifier (TRN03), and, if

situationally required, the Reference Identification (TRN04).

In order to most efficiently and effectively achieve reassociation, the TRN Segment in the Addenda Record of the CCD+Addenda should be the same as the TRN Segment that is included in the associated ERA that describes the payment. However, this is not a requirement under this interim final rule with comment period. We believe that the details of any such requirement are best addressed through operating rules for the health care EFT and remittance advice transaction.

In summary, we are adopting two standards for the health care EFT: the CCD+Addenda implementation specifications in the 2011 NACHA Operating Rules & Guidance for the Stage 1 Payment Initiation, and the TRN Segment implementation specifications in the X12 835 TR3 for the data content of the Addenda Record of the CCD+Addenda. Hereinafter, when we refer to the ''health care EFT standards,'' we are referring to these two standards. The two standards of the health care EFT, together with the current standard for the ERA, the X12 835 TR3, are the three standards for the health care electronic funds transfers (EFT) and remittance advice transaction. Table 3 summarizes these standards and the transmissions to which they apply.

TABLE 3—THE HEALTH CARE ELECTRONIC FUNDS TRANSFERS (EFT) AND REMITTANCE ADVICE TRANSACTION FROM HEALTH PLAN TO HEALTH CARE PROVIDER

Transmission	Data in the transmission	Participants and direction of transmission	Electronic format and implementation specifications
Stage 1 Payment Initiation ..... (A health plan's order, instruction or authorization to its financial institution to make a health care claims payment using electronic funds transfer through the ACH Network.).	Information about the transfer of funds and payment processing information.	From the health plan (Originator) to the health plan's financial institution (ODFI).	• CCD+Addenda as contained in *2011 NACHA Operating Rules & Guidelines*.* • For the Addenda Record ("7"), field 3: X12 835 TR3 TRN Segment implementation specification.*
Stage 2 Transfer of Funds	Payment, information about the transfer of funds, and payment processing information.	From the health plan's financial institution (ODFI) to the provider's financial institution (RDFI).	Standard required by NACHA (non-HIPAA): ACH File (CCD).
Stage 3 Deposit Notification	Information about the transfer of funds and payment processing information.	From the provider's financial institution (RDFI) to the provider (Receiver).	Format to be agreed upon by the provider and its financial institution.
Remittance Advice	Explanation of benefits and/or remittance advice.	From the health plan to the provider.	X12 835 TR3.

* Beginning January 1, 2014.

The goal of the adoption of these standards is to ensure that the TRN Segment is inputted into the CCD+Addenda and is received without error by the health care provider. We believe this can be best achieved by requiring that a single electronic file format, the CCD+Addenda, be used by all health plans that transmit health care EFT to their financial institutions and by requiring that consistent data elements be ordered according to clear implementation specifications found in the X12 835 TR3 and the 2011 NACHA Operating Rules & Guidelines. By using the same standard in the Stage 1 Payment Initiation as is used by financial institutions in the Stage 2 Transfer of Funds (CCD+Addenda), there will be one less step in formatting/translating of the data in the overall transmission and, therefore, a decrease in the risk that an error will be made in that translation. Consistent format and data elements in the file format used by health plans for Stage 1 Payment Initiation of an EFT will make it more likely that the TRN Segment is received by the health care provider and that it will match the TRN Segment sent with the associated ERA.

Section 1173(g)(4)(B)(ii)(I) of the Act requires that the set of operating rules for EFT and health care payment and remittance advice transactions ''allow for automated reconciliation of the electronic payment with the remittance advice.'' We believe the adoption of these standards, eventually in coordination with complementary operating rules, will allow for automated reassociation of health care EFT with ERA, which will ultimately create considerable time savings for health care providers' accounts receivable processes. We believe that the time savings that will be realized from the use of these standards will increase provider migration from paper checks to EFT for health care claim payments. As well, the savings to health plans in transmitting EFT in place of the time and material cost of sending paper checks will be realized as more health care providers migrate to EFT.

To implement the health care EFT standards, a health plan must comply with two different standards developed and maintained by two different organizations, ASC X12 and NACHA. One of the differences is that the nomenclature used by the two organizations is different as to how their respective electronic formats and data content are organized and labeled (files, records, loops, segments, fields, etc.) In order to achieve successful reassociation of a health care EFT with the associated ERA, the data elements common to both transmissions must be correctly harmonized between the CCD+Addenda and the X12 835 TR3. We anticipate that operating rules for the health care electronic funds transfers (EFT) and remittance advice transaction will create further business rules and guidelines that promote consistent application of these data elements across both standards and will better enable reassociation.

E. X12 835 TR3 Remains the Standard for All Transmissions of ERA

In our new text in § 162.1602, we are clarifying that the X12 835 TR3, which is the standard originally adopted for ERA in the Transactions and Codes Sets final rule, remains the standard for ERA transmissions (as defined in § 162.1601(b)), including when an ERA accompanies, is transmitted with, or is contained (enveloped) within a health care EFT. For example, the X12 835 TR3 must be used for ERA that travels through the ACH Network, the Federal

Reserve Wire Network, a payment card network, or any system through which an EFT may travel. The new text in § 162.1602(d)(2) clarifies this by stating that the X12 835 TR3 must be used ''[f]or transmissions described in § 162.1601(a), including when transmissions as described in § 162.1601(a) and (b) are contained within the same transmission.''

F. Other Factors in the Reassociation of the EFT With the ERA

A number of implementation specifications in the X12 835 TR3 and in the 2011 NACHA Operating Rules & Guidelines are pertinent to successful reassociation and are worth re-emphasizing here:

- According to the X12 835 TR3, the total amount of payment transmitted in the health care EFT must equal the total amount of payment indicated on an associated ERA. If a health plan does not comply with this implementation specification, then reassociation will be difficult.
- The 2011 NACHA Operating Rules & Guidelines requires that all financial institutions that participate in the ACH Network must accept CCD+Addenda. Nearly all financial institutions participate in the ACH Network, so nearly all financial institutions accept the CCD+Addenda.
- The 2011 NACHA Operating Rules & Guidelines requires that a Receiver (a health care provider) must request a deposit notification from its RDFI in order to receive payment information. In the context of health care EFT made through the ACH Network, health care providers should work with their banks or financial institutions to ensure that the data in the Addenda Record of the CCD+Addenda (the TRN Segment) is transmitted to them in a format that allows for automated reassociation of the health care EFT with the associated ERA.

G. Additional Considerations

1. The NACHA Standard

We are adopting the CCD+Addenda implementation specifications as contained in the 2011 NACHA Operating Rules & Guidelines as one of the standards for the health care EFT Stage 1 Payment Initiation. The implementation specifications for the CCD+Addenda in the NACHA Operating Rules & Guidelines are not the ''operating rules'' for the health care EFT as that term is used under HIPAA. Rather, as per this interim final rule with comment period, the implementation specifications in the NACHA Operating Rules & Guidelines are one of the standards for the health care EFT. The inclusion of ''Operating Rules'' in the title of the document that includes the implementation specifications should not be confused with the Affordable Care Act's definition and requirement for the adoption of ''operating rules'' for the transactions as described in section 1104(b) of the Affordable Care Act. The operating rules in the NACHA Operating Rules & Guidelines are not synonymous with those specified in the Affordable Care Act. The NACHA Operating Rules are implementation specifications regarding financial transactions that were developed and adopted by ACH participants more than three decades before the Affordable Care Act amended HIPAA to mandate the adoption of operating rules for each of the transactions listed in the Act.

2. The Secretary's Authority To Adopt a Non-ANSI Accredited Standard

The NCVHS, in its February 17, 2011 letter to the Secretary, recommended NACHA as the standards development organization for the development and maintenance of the CCD+Addenda, and in this interim final rule with comment period, we are adopting a NACHA ACH File format. However, NACHA is not a standard setting organization (SSO), as the term is defined by HIPAA, because NACHA is not accredited by the American National Standards Institute (ANSI). As previously discussed in this interim final rule with comment period, under section 1172(c)(2)(B) of the Act, if no SSO has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under HIPAA, then the Secretary may adopt a standard, relying upon recommendations of the NCVHS, and after consultation with the National Uniform Billing Committee (NUBC), National Uniform Claim Committee (NUCC), WEDI, and American Dental Association (ADA), and appropriate federal and State agencies and private organizations. These consultations have taken place through various communication avenues such as the NCVHS hearings, letters and other public meetings.

3. Clarification Regarding Application of Standards to EFT Stages 2 and 3

We note that the definition of the health care electronic funds transfers (EFT) and remittance advice transaction at § 162.1601, as newly defined in this interim final rule with comment period, includes all three of the ACH payment stages, as discussed in section I.B.2. of this interim final rule with comment period and illustrated in Table 2. However, the standards adopted herein are required to be used only for the electronic file that a health plan transmits in conducting the health care EFT Stage 1 Payment Initiation (see Table 2 and Illustrations A and B).

The health care EFT standards adopted herein are not required to be used for the Stage 2 Transfer of Funds from the health plan's financial institution (ODFI) to the health care provider's financial institution (RDFI). The health care EFT standards meet the NACHA ACH standards used in Stage 2 Transfer of Funds: The Stage 1 Payment Initiation transmitted according to the health care EFT standards adopted herein (CCD+Addenda) will indicate to the ODFI that the health care EFT remain in the form of the CCD+Addenda for Stage 2 Transfer of Funds.

We are also not requiring that the standards adopted herein be used for the Stage 3 Deposit Notification transmission from the health care provider's financial institution (RDFI) to the health care provider. The format by which the deposit notification is rendered from the RDFI to the provider remains, at this time, dependent on the business agreement between the provider and the provider's financial institution.

4. The Corporate Trade Exchange Entry (CTX)

Our amendments to § 162.1602(d)(1) clarify that the health care EFT standards adopted in this interim final rule with comment period are not required to be used when health care EFT, as described in § 162.1601(a), and ERA, as described in § 162.1601(b), are transmitted together in the same transmission.

This interim final rule with comment period does not prohibit the voluntary use of EFT formats in which an EFT and ERA travel together in a single transmission using, for example, the CTX ACH File. Some in the financial sector and in the health care industry see the single transmission of EFT and ERA together as a promising approach for seamlessly automating reassociation, and it is hoped that industry initiatives to use and/or test formats that combine the transmission of health care EFT and ERA into one transmission will continue.

While this interim final rule with comment period does not adopt a specific standard for transmitting the ERA together with a health care EFT in a single transmission, compliance with the X12 835 TR3 is required for transmitting the ERA regardless of how the ERA is transmitted. As well, the X12 835 TR3 provides some implementation

specifications for transmittal of the CTX, and nothing in this interim final rule with comment period alters or amends the implementation specifications related to transmitting the CTX within that standard. It is possible that a standard or standards for transmitting the ERA together with the health care EFT in a single transmission could be adopted in future regulations.

5. EFT Conducted Outside the ACH Network

The health care EFT standards adopted in this interim final rule with comment period do not apply to health care claim payments made via EFT outside of the ACH Network. Health plans are not required to send health care EFT through the ACH Network. They may decide, for instance, to transmit a health care EFT via Fedwire or via a payment card network . This interim final rule with comment period neither prohibits nor adopts any standards for health care EFT (as defined in § 162.1601(a)) transmitted outside of the ACH Network. When health plans do, however, send health care EFT through the ACH Network, they must do so using the health care EFT standards adopted herein.

We emphasize that the new regulation text at § 162.1602 specifies that the X12 835 TR3 continues to be the standard whenever the ERA (as defined in § 162.1601(b)) is transmitted, including when an ERA is transmitted together with a health care EFT either through the ACH Network or outside of the ACH Network.

6. International Payments

The CCD+Addenda standard adopted in this interim final rule with comment period cannot be used for Stage 1 Payment Initiation health care EFT made to or from countries outside of the United States. The NACHA Operating Rules & Guidelines requires that all international payment transactions transmitted via the ACH Network use the IAT ACH File. According to NACHA Operating Rules & Guidelines (Section V, Chapter 43), ''IAT transactions include specific data elements defined within the Bank Secrecy Act's (BSA) 'Travel Rule' so that all parties to the transaction have the information necessary to comply with U.S. law, which includes the programs administered by the Office of Foreign Assets Control (OFAC).'' Because the Stage 2 Transfer of Funds must be in the IAT ACH File, the Stage 1 Payment cannot be in the CCD+Addenda.

H. Applicability

1. Covered Entities: Health Plans, Health Care Clearinghouses, and Health Care Providers

The health care EFT standards adopted in this interim final rule with comment period apply to transactions that originate with health plans. We note that some health care providers choose not to conduct transactions electronically. In practice, health plans will only have to use the health care EFT standards adopted herein if the provider wants to receive health care claim payments via EFT through the ACH Network.

If an entity sends payment/processing information to another entity for the purpose of having that receiving entity format the information so that it is compliant with the EFT standards in order to transmit it to the ODFI, then that receiving entity would meet the definition of a health care clearinghouse under HIPAA. The receiving entity would be required to use the health care EFT standards adopted in this interim final rule with comment period.

2. Financial Institutions

The February 17, 2011, NCVHS recommendations on the EFT standard included a recommendation for the Secretary to ''consider the implications of the fact that, as the result of the adoption of the health care EFT standard, some banks may become de facto health care clearinghouses as defined by HIPAA.''

In Stage 1 Payment Initiation, some health plans currently transmit a flat file, an ASC X12 formatted file, or a proprietary formatted file containing payment/processing information to their financial institutions. The financial institutions then translate the data into the CCD format to transmit it through the ACH Network. In this interim final rule with comment period, we have adopted standards that apply to the Stage 1 Payment Initiation. Therefore, were financial institutions to continue to provide this service after the effective date of the health care EFT standards adopted herein, such financial institutions would be accepting information from health plans in a nonstandard format and translating it into the standard format consistent with the activities of a health care clearinghouse as defined at § 160.103.

Under section 1179 of the Act, the HIPAA Administrative Simplification standards do not apply to entities to the extent they are engaged in the activities of a financial institution. Section 1179 of the Act provides as follows:

> To the extent that an entity is engaged in activities of a financial institution (as defined in section 1101 of the Right to Financial Privacy Act of 1978), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:
>
> (1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check or electronic funds transfer.

Section 1179(1) of the Act expressly refers to the use or disclosure of ''information * * * for processing * * * a payment for * * * health care, where such payment is made by any means, including * * * electronic funds transfer'' as an activity of a financial institution. Financial institutions that process or facilitate the processing of health information from a nonstandard format or containing nonstandard data content into health care EFT standards are engaging in ''activities of a financial institution'' as set forth in section 1179 of the Act in performing the processes inherent in the health care EFT standards adopted herein and will continue to be considered doing so after their effective date. Therefore, we have determined that, upon the effective date of these health care EFT standards, when financial institutions receive payment/processing information for these transactions and translate it into the CCD+Addenda format, they will not be required to comply with the health care EFT standards adopted herein.

The health care EFT standards adopted herein are the only HIPAA transaction standards adopted to date that do not contain individually identifiable health information (though, like all HIPAA transactions, they contain *health information* as defined by HIPAA at § 160.103). The information that is required or optional in the health care EFT standards adopted herein is payment/processing information that is necessary for a financial institution to process an EFT through the ACH Network. In fact, the inclusion of protected health information in a Stage 1 Payment Initiation would be inconsistent with the adopted health care EFT standards. As we stated in the preamble to the December 28, 2000, HIPAA Privacy final rule (65 FR 82615):

* * * the ASC X12N 835 we adopted as the 'Health Care Payment and Remittance Advice' standard in the Transactions Rule has two parts. They are the electronic funds transfer (EFT) and the electronic remittance advice (ERA). The EFT part is optional and is the mechanism that payors use to electronically instruct one financial institution to move money from one account to another at the same or at another financial institution. The EFT includes information about the payor, the payee, the amount, the payment method, and a reassociation trace number. Since the EFT is used to initiate the transfer of funds between the accounts of two organizations, typically a payor to a provider, it includes no individually identifiable health information, not even the names of the patients whose claims are being paid.

Thus, even absent section 1179 of the Act, the HIPAA Privacy and Security rules would not apply to the transmission of the health care EFT standards adopted herein.

In summary, we anticipate that after the adoption of the health care EFT standards, some financial institutions will continue to translate nonstandard payment/processing information received from health plans into the CCD format. With the adoption of the health care EFT standards, these financial institutions will, by virtue of performing these activities, become de facto health care clearinghouses as defined by HIPAA. To the extent, however, those entities engage in activities of a financial institution, as defined in section 1101 of the Right to Financial Privacy Act of 1978, (Pub. L. 95–630; effective March 10, 1979), they will be exempt from having to comply with these HIPAA standards with respect to those activities.

The health care EFT standards adopted herein apply to health plans, and health plans are ultimately responsible for ensuring compliance with the standards regardless of whether a health plan puts the data into standard format itself or uses a financial institution to do so. This means that, with regard to the health care EFT standards adopted herein, upon their effective date, if a health plan has an arrangement with a financial institution for the financial institution to format the health plan's nonstandard payment/processing information into the standard CCD+Addenda format for a Stage 1 Payment Initiation and, for whatever reason, the bank does so in a way that is noncompliant with the standards, where the financial institution is the agent of the health plan, the health plan may be responsible for the noncompliance. We expect that some health plans will need to educate their financial institutions about the health care EFT standards adopted herein in order to ensure compliance.

I. Effective and Compliance Dates

Section 1104(c)(2) of the Affordable Care Act states that ''[t]he Secretary shall promulgate a final rule to establish a standard for electronic funds transfers (as described in section 1173(a)(2)(J) of the [Act], as added by subsection [1104](b)(2)(A) [of the Affordable Care Act].'' The Secretary may do so on an interim final basis and shall adopt such standard not later than January 1, 2012, in a manner ensuring that such standard is effective not later than January 1, 2014.'' In each of our previous HIPAA rules, the date on which the rule was effective was the date on which the rule was considered to be established or adopted, or, in other words, the date on which adoption took effect and the CFR was accordingly amended. Typically, the effective date of a rule is 30 or 60 days after publication in the **Federal Register**. Under certain circumstances the delay in the effective date can be waived, in which case the effective date of the rule may be the date of filing for public inspection or the date of publication in the **Federal Register**.

The effective date of standards, implementation specifications, modifications, or operating rules that are adopted in a rule, however, is different than the effective date of the rule. The effective date of standards, implementation specifications, modifications, or operating rules is the date on which covered entities must be in compliance with the standards, implementation specifications, modifications, or operating rules. Here, the Act requires that the standard for electronic funds transfers be effective not later than January 1, 2014. This means that covered entities must be in compliance with the standards by January 1, 2014. If we receive comments that compel us to change any of the policies we are finalizing in this interim final rule with comment period, we will seek to finalize any such changes to allow sufficient time for industry preparation for compliance.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), we are required to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**. Section 553(b) of the APA provides for an exception from this APA requirement. Section 553(b)(B) of the APA authorizes an agency to waive normal rulemaking requirements if the Department for good cause finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Section 553(d)(3) of the APA allows the agency to waive the 30-day delay in effective date where the agency finds good cause to do so and includes a statement of support.

Section 1104 of the Affordable Care Act amended section 1173 of the Act to require the Secretary to adopt standards and a set of operating rules for certain electronic health care transactions under HIPAA. Section 1104(c)(2) of the Affordable Care Act requires the Secretary to ''promulgate a final rule to establish a standard for electronic funds transfers * * *. The Secretary shall adopt such standard not later than January 1, 2012, in a manner ensuring that such standard is effective not later than January1, 2014.'' Given the statutory requirement to promulgate a final rule by January 1, 2012, there is a highly compressed window of time before the statutory adoption date of the EFT standards. We believe Congress may have had this in mind when it expressly authorized the adoption of the EFT standard by an interim final rule. For the reasons detailed below, we have concluded that there is good cause to waive normal rulemaking notice and comment procedures, as they are impracticable. We believe the rationale provided here supports our exercise of the option provided by Congress to promulgate the final rule on an interim final basis.

Section 1172(f) of the Act requires the Secretary to ''rely on the recommendations of the National Committee on Vital and Health Statistics * * * and [to] consult with appropriate Federal and State agencies and private organizations'' before adopting a standard under HIPAA. Furthermore, the Secretary is required to consult four organizations named in section 1172(c)(3)(B) of the Act before adopting a standard that has not been developed, adopted or modified by a standard setting organization, which is the case with one of the EFT standards adopted herein.

Upon passage of the Affordable Care Act in March 2010, the NCVHS immediately scheduled hearings in order to gather industry and government input on the new transaction standards and operating rules mandated by the Affordable Care Act. The order in which the hearings were scheduled was established by the NCVHS based on the statutory effective dates of the new standards and operating rules. Thus, a hearing on operating rules for the eligibility for a health plan and health care claim status transactions was scheduled for July 20, 2010, as those operating rules were required to be adopted by July 1, 2011. Between July

and December of 2010, the NCVHS solicited testifiers for a hearing on EFT standard and operating rules for EFT and ERA, and the NCVHS held a hearing on December 3, 2010.

Based on the December 3, 2010 NCVHS hearing, the NCVHS issued a letter to the Secretary on February 17, 2011 detailing its recommendations for EFT standards. As per the consultation requirements in the Act, we could not proceed with developing a rule for the EFT standard until we received and considered the NCVHS recommendation as well as consulted with appropriate Federal and State agencies and private organizations. Given that the Affordable Care Acts mandates that the EFT standard be adopted by January 1, 2012, the agency had only until November 30, 2011 to consult with the required agencies and organizations and to publish a final rule on the standard—approximately 8 months from the week the Secretary received the NCVHS recommendations.

The December 3, 2010 NCVHS hearing on an EFT standard and operating rules triggered a wave of discussions within industry on the use of EFT in the health care industry. An ASC X12 workgroup began work on an ''ASC X12 Type 2 Technical Report'' entitled *Health Care Claim Payment/Advice Reference Model.* The Workgroup for Electronic Data Interchange (WEDI) initiated the EFT Sub Work Group that began drafting an educational document for health care entities called *Creating and Implementing an EFT Process for Payers and Providers.* A number of representatives from various federal government agencies began meeting on the use of EFT in medical payments from government agencies under the auspices of the Department of Treasury. After March 2011, CAQH CORE began a number of meetings with industry on operating rules for EFT and ERA.

It was crucial for us to participate in these meetings, conduct in-depth research on the payment systems of the health care industry, and continue industry discussions on the EFT transaction. All of these actions were particularly critical because the health care EFT standards are the first standards to be adopted under HIPAA in which the standards and business practices of the financial industry would be considered and a new standards development organization would be part of the process. Not only did this require extensive discussion with the financial industry, it also required the Department to participate in meetings coordinated between the financial industry, representatives of covered entities, and government agencies. These meetings and discussion included issues such as the NCVHS recommendation (in comparison to other options), the relationship between the EFT transaction and the ERA transmission in the health care payment and remittance advice standard transaction, and the implications to the health care and financial industries of an EFT standard in terms of privacy and security issues.

The development of the provisions of this interim final rule with comment period required a thorough understanding of EFT as a tool of the financial industry and how it intersects and works within the health care industry. Based on these discussions from March to July 2011, we developed and drafted the provisions for the health care EFT standards. As detailed in the preamble, the health care EFT standards are a unique combination of a standard from the financial industry and a standard from the health care industry. Without these discussions and research over the past several months, it would not have been feasible to adopt standards for health care EFT that met both industry needs and fulfilled the intentions of HIPAA administrative simplification.

After the research and drafting phase of the rule was completed in July 2011, we were left with four months to publish the rule to meet the statutory deadline of January 1, 2012. Given the minimum practical time it takes to promulgate a rule, we determined there was insufficient time to publish both a proposed and final rule before November 30, 2011.

We also note that the operating rules for EFT and ERA cannot be adopted until a standard for the EFT is adopted. Any delay in adopting the EFT standard would delay adoption of EFT and ERA operating rules, which are required by section 1173(g)(4)(B)(ii)(II) of the Act to be adopted by July 1, 2012, and which must be effective by January 1, 2014. Most importantly, the operating rules benefit industry in significant ways for the processing of claims payments; any delay in the adoption of EFT and ERA operating rules delays industry opportunity for efficiency and cost savings.

Therefore, we conclude that there is good cause to waive normal rulemaking requirements as they are impracticable, and we avail ourselves of the interim final rule option provided by Congress in the Affordable Care Act.

We also find good cause for waiving the 30-day delay in the effective date of this interim final rule with comment period. The 30-day delay is intended to give affected parties time to adjust their behavior and make preparations before a final rule takes effect. Sometimes a waiver of the 30-day delay in the effective date of a rule directly impacts the entities required to comply with the rule by minimizing or even eliminating the time during which they can prepare to comply with the rule. That is not the case here. In this case, covered entities are not required to comply with the adopted standards until January 1, 2014, nearly two years after the publication of this interim final rule with comment period; a waiver of the 30-day delay in the effective date of the rule does not change that fact. That 30-day time period is in fact inconsequential here to covered entities—their statutorily prescribed date of compliance remains January 1, 2014. Because we believe the 30-day delay is unnecessary, we find good cause to waive it. We are providing a 60-day comment period.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on the information collection requirements (ICRs) regarding third party health care EFT enrollment forms.

The health care EFT standards are the implementation specifications for the electronic format that a health plan is required to use for the Stage 1 Payment Initiation. The standards adopted herein do not affect how a provider's financial institution transmits the TRN segment to the provider. Therefore, the provider is not required to change or amend systems or processes. There will be no direct systems costs to physician practices and hospitals to implement the health care EFT standards adopted herein.

However, we do assume that, in part due to this regulation, physician practices, and hospitals will increase their usage of EFT, or in some cases will begin accepting EFT for health care claim payments for the first time. As we relay in section V.A.2. of this interim final rule with comment period, in the savings for health plans, the high range of estimated increase in EFT usage attributable to implementation of the health care EFT standards makes up a percentage of the total increase. The rest will be due to an increased number of insured patients, business culture acceptance of EFT, and statutory and other regulatory initiatives.

We have included both physician practices and hospitals in our calculation (Table 4). Data have demonstrated that hospitals have a much higher usage of EDI than physician practices and, by extension, we assume that hospitals have a higher usage of EFT than physician practices. However, there is no valid data on EFT usage among hospitals and so we will include them with physician practices, knowing that cost estimates are likely conservative.

Many physician practices and hospitals already accept EFT for health care claim payments from the health plans that pay them the most (as a percentage of total payments to the provider), pay them most often, or transmit payment/processing information that works most successfully with the particular provider's practice management system.

While some physician practices and hospitals do not accept any payments via EFT, we assume that all physician practices and hospitals, or their trading partners, are technically capable of receiving payment via EFT. This assumption is based on the fact that no infrastructure is necessary because the provider's financial institution is responsible for the necessary technology required to receive a health care EFT through the ACH Network, and there are few, if any, ''financial institutions'' that do not participate in the ACH Network. Therefore, we assume no systems costs or infrastructure requirements for providers relative to enrolling for health care EFT.

The burden associated with the requirements of this interim final rule with comment period, which is subject to the PRA, is the completion of the health care EFT enrollment, which is accomplished by filling out and submitting what is generally a 3- to 18-page form, obtaining signatures, and transmitting the completed document.

In order to quantify the average cost per physician practice or hospital, we have outlined the following assumptions in the form of a model physician practice that we will use to project enrollment costs:

- For the model physician practice, the time burden of an EFT enrollment with a single health plan is 2 hours. We base this time burden on the estimated length of time it would take an average consumer to complete and submit a 3- to 18-page form, including obtaining bank account, bank routing, and necessary signatures to allow an employer to Direct Deposit an employee's salary into the employee's account (a common consumer EFT enrollment).
- The majority of the enrollment will be done by billing and posting clerk, at that position's average salary rate of approximately $17.5 per hour in 2014 based on Bureau of Labor Statistics. We factored labor costs to increase at the rate of 3 percent per year.
- The model physician practice receives the vast majority of its payments from 25 or less plans. From the beginning of 2014 through 2018, we assume that the number of health plans with whom the model physician practice does business will remain constant because industry trends indicate that the number of health plans will remain constant, or even decrease.[3]
- The model physician practice will receive 34 percent of its health care claim payments via EFT at the beginning of 2014, and this will increase to 56 percent by the end of 2018 (reflecting our calculation in V.A.2. of this interim final rule with comment period for the whole industry).
- Using these factors, we can calculate that the model physician practice is already enrolled in an EFT program with approximately eight of the 25 health plans with whom it does business (34 percent) at the beginning of 2014.
- We predict that the model physician practice would be expected to add six new EFT enrollments from 2014 through 2018. Any updates to the enrollments would be in conduct of the normal course of business.

TABLE 4—COSTS AND NUMBER OF ENROLLMENTS IN HEALTH CARE EFT BY PHYSICIANS AND HOSPITALS FOR 2014 THROUGH 2018

Time (in hours) per enrollment form	Base hourly rate (in dollars) for billing and posting clerks *	Number of physician practices/hospitals	Total number of increased EFT enrollments (Column 3 * 6 enrollments)	Total number of EFT enrollments attributable to health care EFT standards at 18% of total	Number of annual enrollments in health care EFT attributable to adoption of standards
(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)	(Column 6)
2	$17.5	240,727	1,444,362	259,985	52,000

* Department of Labor statistics, based on average hourly salary for billing and posting clerks for NAIC Sector 62, May, 2010 with 3 percent annual increase between 2010 and 2014.

The total increase in the number of health care EFT enrollments from 2014 through 2018 is projected to be 1,444,362 of which approximately 18 percent or 259,985 will be attributable to the implementation of the health care EFT standards. Distributed over 5 years and factoring a 3 percent increase in labor costs for each of the 5 years produces a total burden to industry of nearly $10 million over 5 years.

[3] American Medical Association, ''Competition in Health Insurance: A Comprehensive Study of U.S. Markets,'' 2008 and 2009.

TABLE 5—PAPERWORK REDUCTION ACT ESTIMATED ANNUALIZED BURDEN

	Year					Total
	2014	2015	2016	2017	2018	
Cost (Burden Hours for total hospitals & providers) (in millions)	$1.8	$1.9	$1.9	$2.0	$2.1	$9.7

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this interim final rule with comment period; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–0024–IFC

Fax: (202) 395–6974; or

Email: OIRA_submission@omb.eop.gov.

V. Regulatory Impact Analysis

We have examined the impacts of this interim final rule with comment period as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354) (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 also directs agencies to not only engage public comment on all regulations, but also calls for greater communication across all agencies to eliminate redundancy, inconsistency and overlapping, as well as outlines processes for improving regulation and regulatory review.

A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million in 1995 dollars or more in any 1 year). We estimate that this rulemaking is ''economically significant,'' under section 3(f)(1) of Executive Order 12866 as it will have an impact of over $100 million on the economy in any 1 year. Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of this interim final rule with comment period, and the rule has been reviewed by the Office of Management and Budget. We anticipate that the adoption of the health care EFT standards would result in benefits that outweigh the costs to health care providers and health plans.

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the Small Business Administration (SBA).

We have determined, and certify, that this rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required. Our reasoning follows:

Most physician practices, hospitals and other health care providers are small entities, either by nonprofit status or by having revenues of $7 to $34.5 million in any one year. However, the only costs to providers are the possible costs of filling out EFT enrollment forms with health plans, detailed in the Collection of Information section herein. Those costs are approximately $35 per health care provider per year. Numbers of this magnitude do not remotely approach the amounts necessary to be a ''significant impact'' on an individual provider.

The health insurance industry was examined in depth in the Regulatory Impact Analysis prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866), published on August 3, 2004. In that analysis, it was determined that there were few if any ''insurance firms,'' including health maintenance organizations (HMOs), that fell below the size thresholds for ''small'' business established by the SBA. Then and even more so now, the market for health insurance is dominated by a relative handful of firms with substantial market shares. We assume that the ''insurance firms'' are synonymous, for the most part, with health plans that make health care claims payments to health care providers and are, therefore, the entities that will have costs associated with implementing health care EFT standards.

There are, however, a number of HMOs that are small entities by virtue of their nonprofit status even though few if any of them are small by SBA size standards. There are approximately one hundred such HMOs. These HMOs and health plans that are non-profit organizations, like the other firms affected by this interim final rule, will be required to implement the health care EFT standards for Stage 1 Payment Initiation for health care claims to health care providers. Accordingly, this interim final rule will affect a ''substantial number'' of small entities. However, we estimate, that the costs of this interim final rule with comment period are, at most, approximately $12,000 per health plan (regardless of size or non-profit status). Again, numbers of this magnitude do not remotely approach the amounts necessary to be a ''significant economic impact'' on firms with revenues of tens of millions of dollars (usually hundreds of millions or billions of dollars annually).

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. This interim final rule would not affect small rural hospitals, under the same reasoning previously given with regard to health care providers. Therefore, the Secretary has determined that this rule would not

have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This interim final rule with comment period does not impose spending costs on State, local or tribal government in the aggregate, or by the private sector, of $136 million. As is reflected in the RIA, costs on all entities are estimated to be not more than $20 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule does not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

A. Current State, Need for Mandated EFT Standards, and General Impact of Implementation

1. Billing and Insurance Related (BIR) Costs

Health care spending in the United States makes up an estimated 17 percent of the U.S. Gross Domestic Product (GDP) [4] and costs over $8,000 per person annually.[5] Many factors contribute to the high cost of health care in the United States, but studies point to administrative costs as having a substantial impact on the growth of spending [6] and an area of costs that could likely be reduced.[7]

A significant portion of administrative costs for physician practices and hospitals are billing and insurance-related (or BIR) costs (See Illustration C). It is estimated that half of administrative costs for physician practices are BIR costs [8]—or between 10 to 12 percent of a physician practice's annual revenue.[9] In contrast, the U.S. retail sector spends about 5 percent of annual revenue on accounts receivable.

Along with estimated increases in all health care administrative costs, we can expect BIR costs to grow as well: In a study by the Washington State Office of the Insurance Commissioner, BIR costs grew between 1997 and 2005 at an average pace of 20 percent per year for hospitals in Washington State and 10 percent per year for physicians.[10] In some cases, the increasing administrative cost of processing claims threatens the survival of small and mid-size physicians' offices.[11]

[4] *http://stats.oecd.org/index.aspx.*

[5] Keehan, S.P.; Sisko, A.M.; Truffer, C.J.; Poisal, J.A.; Cuckler, G.A.; Madison, A.J.; Lizonitz, J.M.; & Smith, S.D.; ''National Health Spending Projections Through 2020: Economic Recovery and Reform drive faster Spending Growth,'' *Health Affairs* 30,(8): doi:10.1377/hlthaff.2011.0662, 2011.

[6] ''Technological Change and the Growth of Health Care Spending,'' A CBO Paper, Congressional Budget Office, January 2008, *http://www.cbo.gov/ftpdocs/89xx/doc8947/01-31-TechHealth.pdf.*

[7] Morra, D., Nicholson, S., Levinson, W., Gans, D. N., Hammons, T., & Casalino, L.P. ''U.S. Physician Practices versus Canadians: Spending Nearly Four Times as Much Money Interacting with Payers,'' *Health Affairs:* 30(8):1443–1450, 2011.

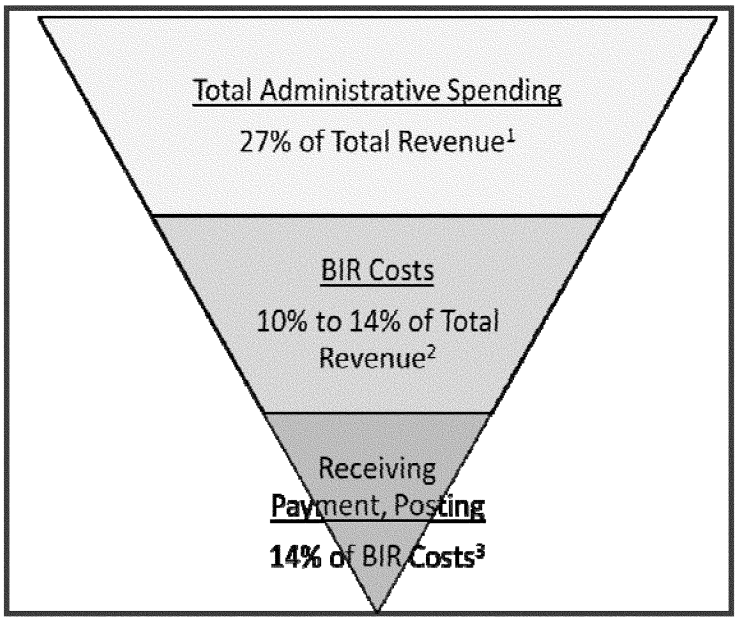
[8] Kahn, J.G., Kronick, R., Kreger, M., & Gans, D.N., ''The cost of health insurance administration in California: Estimates for insurers, physicians, and hospitals,'' *Health Affairs:* 24(6):1629–1639, 2005.

[9] Sakowski, J.A., Kahn, J.G., Kronick, R.G., Newman, J.M., & Luft, H.S.,''Peering into the black box: Billing and insurance activities in a medical group,'' *Health Affairs:* 28(4):w544–w554, 2009.

[10] ''Health Care Administrative Expense Analysis, Blue Ribbon Commission Recommendation #6: Final Report 11/26/07;'' Washington State Office of the Insurance Commissioner.

[11] Akscin J., Barr T., & Towle E.; ''Key Practice Indicators in Office-based oncology practices: 2007 Report on 2006 data. J Oncol Pract 3:200–203, 2007, and Mulvey, T.: ''The Time has Come for National Insurance Cards,'' J. Oncol Pract, 4:161, 2008.

ILLUSTRATION C. ADMINISTRATIVE COSTS OF PHYSICIAN PRACTICES



[1] Woolhandler, S., Campbell, T., and Himmelstein, D.U., "Costs of health Care Administration in the United States and Canada," *New England Journal of Medicine*, 2003; 349: 768-75

[2]Kahn, et. al., 2005; Sakowski, et. al., 2009

[3]Sakowski, et. al., 2009. BIR costs are allocation of nonclinical full-time-equivalent staff performing BIR activities.

BIR tasks include patient billing, insurance verification, responding to patients' cost questions, contracting with health plans, health care provider credentialing, processing payer requests for additional information, authorizations (procedures, referrals), payment for services provided outside the group, coding support, entering charges, claims review and edits, filing claims, creating and mailing patient statements, data entry and payment processing managements, collecting payments and posting to patient accounts, depositing checks and payments, account reconciliation, discrepancy research, follow-up, and write-offs, posting refunds, follow-up on denials, underpaid, nonresponsive claims, filing for shared risk-pool payments, and filing for contractual payments.[12]

BIR tasks are costly, in part, because physician practice staff must often manually customize transactions depending on the separate requirements of multiple health plans, insurance companies, clearinghouses, and third party administrators with whom the physician practice contracts. Because of the manual nature of BIR tasks, the majority of BIR costs are associated with staffing costs. Hospitals, physician offices and other health care providers employ more billing and posting clerks than any other industry, according to the U.S. Bureau of Labor Statistics.[13] These costs include not just the labor costs of employing staff, but also the opportunity cost of providers whose time would otherwise be spent caring for patients. A 2009 study found that the average physician spent three hours a week interacting with health plans—nearly three weeks a year—while physicians' nursing and clerical staff spent much more time.[14] Above and beyond the financial costs of manual BIR tasks, interruptions in the work of physician practices to deal with BIR tasks may interfere with patient care.

Simply put, there are qualitative and quantitative savings to be gained by automating many BIR tasks. For example, 14 percent of administrative staff time on BIR tasks in a physician practice is spent simply receiving payments and posting the payments to accounts receivable.[15] Automated electronic payment and posting, such as what is possible through use of EFT, would decrease this percentage.

The August 2000 Transaction and Code Sets final rule was intended, among other things, to reflect the Congress' intent in the 1996 HIPAA statute to decrease health care administrative costs for some of the electronic health care transactions that include BIR tasks. Standards for electronic transactions for claim submission, payment, and remittance advice were adopted in the Transaction and Code Sets final rule with the goal of making these transactions more consistent, and therefore less costly, for health care providers.

A standard for EFT was not adopted at that time because section 1173(a)(2)(E) of the Act stipulates the transaction for which the Secretary is required to adopt a standard as the ''health care payment and remittance advice,'' with no explicit reference to EFT. At that time, we adopted the ASC X12 TR3 835 to support primarily the ERA.

In general, the savings and benefits related to use of EFT for business-to-business transactions is well established

[12] Casalino, L.P., Nicholson, S., Gans, D.N., Hammons, T., Morra, D., Karrison, T., & Levinson, W., ''What does it cost physician practices to interact with health insurance plans?'' Health Affairs, 28(4) (2009):w533–w543.

[13] *http://data.bls.gov/cgi-bin/print.pl/oes/current/oes433021.htm.*

[14] Casalino, *et al.,* 2009.

[15] Sakowski *et al.,* 2009.

(see section I.B.4. of this interim final rule with comment period) and demonstrates that a physician practice that accepts EFT payments for health claim payments could expect to decrease its BIR costs. Yet adoption and use of EFT by physician practices and hospitals has been slow when compared to U.S. consumer and other industry EFT use, and seemingly obvious BIR savings go unrealized in the health care industry.

We have noted the reasons given by industry as to why there has not been greater adoption of EFT for health care claim payments among health care providers in Section I.D. The obstacles to greater adoption and use of EFT, and thus the possibility of staff time savings conducting BIR tasks throughout the health care industry, could be lessened by the adoption of health care EFT standards.

This interim final rule with comment period aims to solve a collective action problem that currently leads to underutilization of EFT. Without health care EFT standards, the costs of adopting EFT by a particular physician often exceed the benefits. By creating EFT standards, this rule will result in benefits exceeding costs for most physicians.

2. Current and Projected EFT Usage

For an estimated current usage of EFT for health care claim payments, we considered numerous health care and other industry studies. All these studies vary, but all report that EFT is generally used for less than 40 percent of health care claim payments.

According to the ''2010 AFP Electronic Payments: Report of Survey Results,'' produced by the Association for Financial Professionals and underwritten by J.P. Morgan,[16] the typical U.S. business makes 43 percent of its business-to-business payments by EFT. There was general agreement among industry representatives who testified at the December 2010 NCVHS hearing that the usage of the EFT in the health care industry was considerably less than other industries (that is, less than 43 percent). The National Progress Report on Healthcare Efficiency, 2010, reports that only ten percent of all health care claim payments are conducted electronically.[17] The National Progress Report calculated this based on data supplied by Emdeon, a national health care clearinghouse that sponsors the report. PNC Bank testified at the December 3, 2010 NCVHS hearing that 30 percent of health care claim payments it initiated on behalf of health industry clients in September 2010 were EFT payments.[18] Seventy percent of Medicare payment to health care providers are made via EFT. The Medicare EFT payments to health care providers account for 20 percent of all industry health care claim payments.

Based on this data and research, we estimate the entire health care industry combined, including Medicare, used EFT for approximately 32 percent of all health care claim payments in 2010 (see Table 6), approximately 26 percent less than the 43 percent U.S. business-to-business average as estimated in the J.P. Morgan study and 12 percentage points more than the number of Medicare health care claim payments transmitted via EFT(that is, only 12 percent of all health care claim payments via EFT were made by Medicaid, other government, and private payers.) We estimate that commercial health plans transmit health care claim payments via EFT for approximately 15 percent of their total health care claim payments. This approximates to Emdeon statistics, adjusted to account for the fact that data illustrates that Emdeon statistics are low.

TABLE 6—EFT USAGE FOR MEDICARE, MEDICAID AND OTHER GOVERNMENT HEALTH PLANS, AND COMMERCIAL HEALTH PLANS IN 2010

Health plan category	EFT usage as a percentage of payments per category in 2010
Medicare	70
Medicaid, CHIP, VHA, and Other Federal, State, and Local Governmental Payers	19
Commercial Health Plans	15
Entire Industry	*32

*Weighted average, based on proportion of payments per category.

We will apply these estimates to our cost/benefit analysis, but will adjust them for 2013 levels, the year before the health care EFT standards will be implemented, to establish a baseline for EFT usage for health care claim payments. Our projected numbers of health care claim payments in 2013 and EFT health care claim payments in 2013 are based on data and projections derived from a number of different sources:

- The Center for Medicare & Medicaid Services (CMS) ''National Health Expenditure Data'' (*http://www.cms.gov/NationalHealthExpendData/25_NHE_Fact_Sheet.asp*).
- CMS Electronic Data Interchange (EDI) Performance Statistics (*http://www.cms.gov/EDIPerformanceStatistics/*) and CMS CROWD data. Medicare data is the most precise data we can use for our baseline because it tracks EFT usage among Medicare providers alone. With over 42 million participants, Medicare is the largest single payer of health care in the U.S. and accounts for 20 percent of total health care expenditures.[19] Therefore, we have based many of our estimates and projections on Medicare data.
- ''The 2010 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds'' (*http://www.cms.gov/ReportsTrustFunds/downloads/tr2010.pdf*).
- Financial Management Service, U.S. Department of Treasury, Payment Volume Charts Treasury-Disbursed Agencies, (*www.fms.treas.gov/eft/reports.html*).
- DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60–238, ''Income, Poverty, and Health Insurance Coverage in the United States: 2009,'' U.S. Government Printing Office, Washington, DC, 20010.
- Veteran Health Administration Chief Business Office.

A major assumption in our impact analysis is that the percentage of total health care claim payments that are transmitted via EFT will increase by 52 percentage points from 2010 to 2023 across the health care industry (Table 7). Another way of illustrating this increase is that we estimate that the average physician's practice or hospital will begin receiving EFT health care claim payments from a little more than one additional health plan every year between 2013 and 2023. We base this estimated growth on three premises:

First, the number of total health care claim payments are expected to increase considerably, due to the anticipated increase in the number of claims, and usage of EFT is expected to rise with it. Health care claims are expected to increase due to an aging population that will require an increasing number of health care services; for instance, aging baby boomers will double Medicare's enrollment between 2011 and 2031.[20]

[16] *http://www.afponline.org/pub/res/topics/topics_pay.html.*

[17] Produced by the U.S. Healthcare Efficiency Index, *http://www.ushealthcareindex.com.*

[18] *http://www.ncvhs.hhs.gov.*

[19] The Center for Medicare & Medicaid Services (CMS) ''National Health Expenditure Data'' (*http://www.cms.gov/NationalHealthExpendData/25_NHE_Fact_Sheet.asp*), 2011.

[20] ''The 2011 Medicare Trustees Report: The Baby Boomer Tsunami,'' presentation by the American

As well, the Affordable Care Act is expected to increase the number of insured adults by 32 million in 2014,[21] though this anticipated rise in the number of health care claims may be countered somewhat by the Affordable Care Act's initiatives to encourage the bundling of payments.[22] Not only will more health care claims mean more payments, but the expected increase in claims will drive health care providers to seek more automated BIR processes in order to handle them all.

Second, it is anticipated that the use of electronic payments is expected to become more widespread and acceptable for U.S. businesses and society at large. ACH payments increased 9.4 percent every year between 2006 and 2009.[23] Business-to-business transactions have increasingly moved to EFT. E-commerce is expected to have a compound average growth rate of 11 percent each year from 2009 to 2014.[24] Growth of ACH payments is expected in sectors of the economy that have remained largely untapped by electronic payments; for instance, business-to-consumer transactions and person-to-person EFT transactions.[25]

Third, statutory and regulatory initiatives at the State and Federal level will drive or attract health care entities to increased usage of EFT. For example, in 2010, Ohio implemented a state law requiring that health care plans pay health care claims via EFT if the claims are submitted electronically.[26] On the Federal level, regulatory initiatives include EFT requirements for Federal payments issued by the Department of the Treasury, and implementation of provisions in the Affordable Care Act, including the health care EFT standards and the anticipated operating rules on the health care and remittance advice standards.

Table 7 illustrates the predicted increase in adoption by health plan sector, driven by the increased number of health care claims, business acceptance, and regulatory initiatives. Taken as a whole, we estimate EFT usage will increase by 52 percentage points, as a percentage of total payments, across the whole industry, from 32 percent in 2010 (Table 6) to 84 percent in 2023 (Table 7).

TABLE 7—PREDICTED EFT USAGE BY 2023

Health plan category	EFT Usage as a percentage of payments per category in 2023
Medicare	98
Medicaid, VHA, & Other Federal, State, and Local Government Payers	79
Commercial	79
Entire Industry	*84

*Weighted average, based on proportion of payments per sector.

3. Projected Increase in EFT Usage Attributable to Implementation of the Health Care EFT Standards

This impact analysis is based on the assumption that the health care EFT standards will make health care claim payments via EFT more cost effective and will therefore incentivize increased usage of EFT by physician practices and hospitals. We estimate a 6 to 8 percentage point annual increase in the use of EFT for health care claim payments (as a percentage of total payments year over year) from 2014 through 2018 attributable to implementation of the health care EFT standards. Thereafter, we estimate a 4- to 6-percentage point increase in the use of EFT for health care claim payments (as a percentage of total payments year over year) from 2019 through 2023 attributable to implementation of the health care EFT standards. We now look more carefully at the basis and dynamics of that assumption.

The numbers illustrated in Table 6 reflect the current total number of EFT transactions transmitted by all health plans and received by all health care providers. On the sending side, health plans find that they only transmit EFT to some of the health care providers with whom they do business, and, even to providers who receive health care claim payments from them via EFT, health plans may still sometimes send health care claim payments via paper checks.

On the receiving end, all health care providers have the capability to receive EFT, just as all consumers with a bank account are able to receive Direct Deposit. However, many health care providers only receive EFT from only a subset of health plans from which they receive health care claim payments. For example, most physician practices and hospitals with Medicare patients receive their health care claim payments via EFT, but many do not receive EFT health care claim payments from the other health plans with which they do business, as the percentages in Table 6 demonstrate.

Although health plans are the entities that send EFT and that will be required to comply with the health care EFT standards, it is the physician practices and hospitals that drive overall adoption and usage of EFT. Most health plans give physician practices and hospitals a choice of payment between paper checks (sometimes accompanied by paper remittance advice) or EFT. Up until now, the numbers demonstrate that, while physician practices and hospitals may choose to accept EFT from some health plans, they are clearly choosing to continue to receive paper checks from the majority of the health plans with whom they do business.

In general, physician practices and hospitals choose to receive EFT: (1) From health plans with whom they do the most business in terms of amounts or frequency of payments; and/or (2) from health plans that transmit payment/processing information via EFT that allows the physician practices' and hospitals' practice management systems to reassociate the payment with the ERA with the least amount of manual intervention. In terms of the first criteria, many physician practices and hospitals will not go to the trouble of enrolling with health plans with which they do not conduct much business. For these providers, the burden of enrollment outweighs the health care provider's perceived benefits to accepting EFT. In terms of the second criteria, a health care provider may find that manually reassociating paper checks with remittance advice (paper or electronic) is easier, more efficient, and more familiar than attempting to manually reassociate an EFT with remittance advice.

The reasons why automated reassociation may be more difficult or less efficient than manually reassociating paper checks with remittance advice were described in testimony at the December 3, 2010 NCVHS hearing and fall into two

Enterprise Institute for public Policy Research, May 2011: *http://www.aei.org/event/100407.*

[21] *http://www.whitehouse.gov/healthreform/relief-for-americans-and-businesses.*

[22] *http://www.whitehouse.gov/healthreform/timeline.*

[23] ''The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006–2009,'' Research Sponsored by the Federal Reserve System, April 2011, *http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.*

[24] Sucharita Mulpuru, P.Hult, ''U.S. Online Retail Forecast, 2009 to 2014: Online Retail Hangs Tough for 11% Growth in a Challenging Economy,'' March, 2010, Forrester Research, *http://www.forrester.com/rb/Research/us_online_retail_forecast,_2009_to_2014/q/id/56551/t/2.*

[25] Shy, Oz, ''Person-to-Person Electronic Funds Transfers: Recent Developments and Policy Issues,'' Public Policy Discussion Paper No. 10–1, Federal Reserve Bank of Boston, *http://www.bostonfed.org/economic/ppdp/2010/ppdp1001.pdf.*

[26] *http://www.osma.org/tools-resources/reimbursement-payer-assistance/electronic-funds-transfers-eft.*

categories (see section I.D. of this interim final rule with comment period for a complete summary): (1) The time difference between the arrival of the EFT and the arrival of the ERA; and (2) the lack of a TRN Segment in the EFT needed for automated reassociation of the ERA with the associated ACH payment. The focus of the health care EFT standards adopted herein is to ameliorate the latter issue.

According to the American Medical Association, ''If a payer does not include the accurate TRN Segment, or the bank fails to maintain it without any change, there is no easy way for the physician practice to match the payment with the X12 835 * * * unless payers are required to use a tracking number, and complete the fields to determine accurate payment to the highest specificity, the value of the EFT transaction will be limited.''[27]

A number of industry representatives stated their support for the use of the TRN Segment in increasing health care provider usage of EFT at the December 3, 2010 NCVHS hearing: ''The need for reconciled transactions is key,'' a representative of HERAE, a health care payment and data automation company, stated in written testimony, ''but without key elements of data being retained through the entire process, a significant quality breakdown occurs that can exasperate the industry and stifle innovation. Such is the case with EFT data elements being transmitted and received for provider use.'' [28]

In deciding to receive health care claim payments via EFT from any particular health plan, the health care provider is making a cost/benefit analysis, comparing the cost and benefit of processing paper checks with the costs and benefits of EFT. This is analogous to the payment decision consumers make every day between paper-based transactions and electronic payments when considering how to receive their paychecks, how to pay their bills, and how to manage their accounts. One reason for the current slow adoption rate of EFT among physician practices and hospitals is that the EFT transaction fails to win physicians' and hospitals' cost/benefit analysis. Many physician practices and hospitals conclude that, because of the difficulties in enrollment and reassociation, they will maintain their current processes based on paper checks.

The health care EFT standards are intended to make the EFT a more efficient and economic method for receiving health care claim payments. The health care EFT standards require that the payment information needed for automated reassociation (the TRN segment) be sent with the EFT. By mandating use of an ACH File and holding the health plan accountable for including the X12 835 TRN Segment, the health care EFT standards give physician practices and hospitals assurance that intermediaries on the health plan's side (clearinghouses, financial institutions, payment vendors) will not alter or omit payment/processing information required for automated reassociation. In so doing, more of the benefits of EFT to physician practices and hospitals can be realized, and physicians and hospitals will be more likely to conclude that EFT is more cost effective than continued use of paper checks.

For these reasons, we believe that an estimated range of 6 to 8 percent annual increase in the percentage of payments per year that are EFT from 2014 through 2018 and a 4 to 6 percent increase from 2019 through 2023 can be attributed to the implementation of the health care EFT standards.

Table 8 illustrates the percentage of EFT usage by 2023 that is attributable to adoption and implementation of the health care EFT standards. The Table demonstrates that usage of EFT to pay claims by the health care industry would be an estimated 12 to 17 percent less in 2023 were the health care EFT standards not adopted. This projection is derived from the estimated number of payments that will shift from paper checks to EFT because providers recognize the time and cost savings produced by health plans use of the health care EFT standards. However, in order to have a comprehensive picture of the consequences of not adopting the health care EFT standards, we would have to consider other factors.

For instance, because operating rules for the health care EFT and remittance advice transaction cannot be adopted before the adoption of health care EFT standards, the increased use of EFT by providers that might be attributable to EFT and ERA operating rules will not occur without adoption of the health care EFT standards. Considering that factor, if the health care EFT standards are not adopted, use of EFT by providers could be less than what is estimated in Table 8, Column 3.

Another factor to consider when attempting to estimate the consequences of not adopting the health care EFT standards is the fact that payers realize savings in printing and mailing costs when they use EFT with or without the adoption of health care EFT standards. In contrast, as we have described in this preamble, without the data elements required by the health care EFT standards, the time and cost savings of EFT will not be realized by providers. If health care EFT standards are not adopted, it is possible that state laws and health plans would create laws and requirements that would force providers to accept EFT for health care claim payments, thus allowing savings for the payers but creating a possible burden for providers. The result would be that providers use of EFT might increase, even at the rate illustrated in Table 7, but the considerable time and cost savings possible through use of EFT transmission would not be realized.

TABLE 8—PREDICTED USAGE OF EFT IN 2023 WITH AND WITHOUT THE HEALTH CARE EFT STANDARD

Health plan category	EFT usage as a percentage of payments per category in 2023 assuming adoption of health care EFT standards	Increase in EFT usage as a percentage of payments if health care EFT standards are not adopted
(Column 1)	(Column 2)	(Column 3)
Medicare	98	98

[27] ''Standardization of Electronic Funds Transfer Transaction and Process White Paper,'' prepared by the American Medical Association Practice Management Center, December 2010, *http://www.ama-assn.org/ama1/pub/upload/mm/368/electronic-funds-transfer-white-paper.pdf.*

[28] ''Six Years of Marketplace ERA & EFT Learnings & Recommendations Regarding the Rules: Written Testimony to the National Committee on Vital and Health Statistics (NCVHS), the Sub-Committee on the Rules for ERA/EFT per the Patient Protection and Affordable Care Act,'' by Jim Ribelin, HERAE, LLC., submitted December, 2010.

TABLE 8—PREDICTED USAGE OF EFT IN 2023 WITH AND WITHOUT THE HEALTH CARE EFT STANDARD—Continued

Health plan category (Column 1)	EFT usage as a percentage of payments per category in 2023 assuming adoption of health care EFT standards (Column 2)	Increase in EFT usage as a percentage of payments if health care EFT standards are not adopted (Column 3)
Medicaid, VHA, & Other Federal, State, and Local Government Payers	79	56 to 63.
Commercial	79	56 to 63.
Entire Industry	*84	67 to 72.

*Weighted average, based on proportion of payments per sector.

It should be noted that the health care payment is only one element of the payment process, and the sending and receiving of health care claim payments is only one part of the total BIR cost. As such, the health care EFT standards work in concert with other regulatory and industry-based initiatives that are intended to decrease overall costs associated with how a health care provider gets paid. For instance, we will be adopting operating rules for the health care EFT and remittance advice transaction by July, 2012, as per the Affordable Care Act, and operating rules will be adopted for four other HIPAA transactions before July 2014. By themselves, none of these initiatives will significantly decrease BIR costs. However, there is industry consensus that BIR costs can be reduced considerably, and the health care EFT standards are an important part of that overall effort.

B. Alternatives Considered

1. Alternative 1: Adopt A Standard for Stage 2 Transfer of Funds or Stage 3 Deposit Notification Transmissions

The CCD+Addenda is an ACH File that is used between financial institutions, the ODFI and the RDFI, in the Stage 2 Transfer of Funds. As this interim final rule with comment period demonstrates, the CCD+Addenda is also an electronic format that an Originator can use in the Stage 1 Payment Initiation to order, instruct, or authorize the ODFI the send a transaction through the ACH Network. In the December 2010 NCVHS hearing, these two different uses of the CCD+Addenda—to initiate payment and to actually transfer funds through the ACH Network—were not consistently differentiated in testimony. However, the co-chair of the NCVHS Subcommittee on Standards made clear to testifiers what the aim of the health care EFT standard(s) was to be: ''We're not trying to standardize [transmissions] between two banks. That's not our role; not our responsibility. Our responsibility and role is to identify the standard that a health plan will be submitting to a bank, and defining that as the standard, and operating rules that will go along with it. Between the banks there is no role, in many respects, for what we do.'' [29]

In this interim final rule with comment period, we did not adopt a standard for the Stage 2 Transfer of Funds for two reasons, and we believe these reasons reflect why the NCVHS did not perceive recommending the adoption of a standard ''between two banks'' as its ''responsibility and role,'' as follows:

First, as the NCVHS pointed out, Stage 2 Transfer of Funds is a transaction between two financial institutions. As we describe in the Applicability section of this preamble, due to the nature of the contents of the health care EFT (payment/processing information with no PHI), the standards adopted herein would not be applicable to financial institutions.

Second, there is no practical reason to adopt the CCD+Addenda as the standard for the Stage 2 Transfer of Funds. When a health plan's financial institution receives the Stage 1 Payment Initiation in the form of a CCD+Addenda, there is no question that the Stage 2 Transfer of Funds should also be transmitted in CCD+Addenda by the health plan's financial institution. The Stage 1 Payment Initiation transmitted according to the health care EFT standards will indicate to the health plan's financial institution that the health care EFT remain in the form of the CCD+Addenda for Stage 2 Transfer of funds. This is one of the main reasons for adoption of an ACH File as the health care EFT standard for Stage 1 Payment Initiation instead of other possible formats. We intend to reduce the number of places that data translations or reformatting occur in the transmittal of health care EFT from the health plan to the health care provider. Data can be lost or misplaced every time the payment/processing information is translated or reformatted.

In this interim final rule with comment period, we did not adopt a standard for the Stage 3 Deposit Notification. Although the testimony at the NCVHS December 3, 2010 hearing referred to the loss of the TRN Segment in the translation or reformatting that a health care provider's financial institution undertakes in the Stage 3 Deposit Notification, there was no specific discussion or recommendations from those testifying regarding the adoption of a standard for Stage 3 Deposit Notification.

2. Alternative 2: Adopt the CTX as a Health Care EFT Standard

At the December 3, 2010 NCVHS hearing, stakeholder testimony was given concerning the CTX. The CTX, as previously noted, is an ACH file that could include the health care payment/processing information as well as the entire ERA. According to some testimony at the NCVHS December 3, 2010 hearing, if both the health care EFT (payment/processing information) and the ERA were transmitted together in a single transmission, then reassociation by the health care provider would not be necessary. It would be the electronic version of a paper check sent through the mail together with paper remittance advice, but without the material and time costs associated with paper transactions. In testimony, a representative from the financial industry recommended the CTX and stated that ''a significant opportunity will have been lost in this process if the

[29] Co-chair Walter Suarez, NCVHS Subcommittee on Standards, Administrative Simplification under the Patient Protection and Affordable Care Act Standards and Operating Rules for Electronic Funds Transfer (EFT) and Remittance Advice (RA), December 3, 2010, hour 5:05 in audio recording: *http://hhs.granicus.com/MediaPlayer.php?publish_id=11.*

end result is a solution which does not tackle this reassociation challenge.'' [30]

We did not adopt the CTX for three reasons. First, as discussed in section I.C. of this interim final rule with comment period, the health care EFT is processed and transmitted from a different system in a health plan than the system that transmits the ERA. In essence, adoption of the CTX would be a mandate to dramatically change the processes and systems of health plans and health care providers. Second, there is little to no experience with the CTX in the health care industry, and it is therefore difficult to support assumptions that administrative simplification and its estimated benefits can be realized simply by the adoption of an untried electronic format. Third, although there was industry and stakeholder testimony supporting the adoption of the CTX, the great majority of testimony favored adoption of the CCD+Addenda. There was much interest in and support for the CTX, but the testimony, in general, urged further exploration of the use of the CTX before it is considered as a viable standard.

As has been illustrated, EFT is used much less in the health care industry than it is in other industries. Our intent with the health care EFT standards is to attract more physician practices and hospitals to use the EFT for health care claim payments, and achieve some clear savings in a relatively short period of time. However, adoption of the CTX would require an overhaul of most health plans', physician practices', and hospitals' payment/billing and claim adjudication systems, processes, and organizational structures. Given the low use of EFT by physician practices and hospitals, and the assumed cost of an overhaul of systems and processes to accommodate the CTX, it is possible that adoption of the CTX at this time as the health care EFT standard would actually reduce the number of physicians and hospitals willing to use EFT to receive health care claim payments in the short term.

3. Alternative 3: Adopt the X12 835 TR3 as the Health Care EFT Standard for Stage 1 Payment Initiation

This interim final rule with comment period adopts two standards for the health care EFT: The CCD+Addenda as the standard for Stage 1 Payment Initiation and the X12 835 TR3 TRN Segment for the data content of the Addenda Record. ASC X12 is the SDO of the X12 835 TR3; NACHA has authority over the CCD+Addenda.

It is possible for a data segment of X12 835 TR3 to be utilized as a Stage 1 Payment Initiation from a health plan to its financial institution. According to X12 835 TR3: ''* * * the 835 can authorize a payee to have a DFI [(Depository Financial Institution)] take funds from the payer's account and transfer funds to the payee's account. The 835 can authorize a DFI to move funds. In this mode, the 835 is sent to the payer's DFI.'' (Section 1.10.1.1) Because a data segment of the ASC X12 835 TR3 can be used by a health plan in a Stage 1 Payment Initiation to its financial institution, it was considered a possible candidate for the Stage 1 Payment Initiation health care EFT standard.

Along with the X12 835 TR3, other electronic formats were considered candidates for the standard for the Stage 1 Payment Initiation health care EFT standard as well. Currently, a health plan can use proprietary files, the ASC X12 820, and other formats in a Stage 1 Payment Initiation transmission to its financial institution.

Our decision to adopt the CCD+Addenda instead of the X12 835 TR3, or any other electronic format, for the Stage 1 Payment Initiation health care EFT standard was based mostly on written and verbal testimony given at the December 3, 2010 NCVHS hearing. At that hearing, there was overwhelming support for use of the CCD+Addenda. The reasons for support appeared to have two bases: First, the CCD+Addenda was seen by testifiers as a successful electronic format, reportedly used for nearly all health care claim payments transmitted via EFT in Stage 2 Transfer of Funds transmissions between financial institutions, and, to a lesser extent, used by many in Stage 1 Payment Initiation from a health plan to a health plan's financial institution.

While some industry representatives implied in testimony that other electronic formats were used in the Stage 1 Payment Initiation, including the ASC X12 820 and flat files, none of those that testified stated that an X12 835 was ever used. Further, no one suggested in written or verbal testimony that an X12 820 or flat file be the standard.

At one point during the testimony of December 3, 2011, NCVHS asked representatives from NACHA, ASC X12, and the Council for Affordable Quality Healthcare's (CAQH) Committee on Operating Rules for Information (CORE), whether there was any consideration given to using the ASC X12 835 as the electronic format that transmits a health plan's order, instruction, or authorization for a health care EFT to its financial institution. The representatives replied that no consideration had been given, and did not disagree with the co-chair when he stated that the apparent choice was only between an ACH File and proprietary formats.[31]

As well, at the NCVHS hearing and in written testimony, no proprietary formats were suggested as a possible standard for the Stage 1 Payment Initiation.

The second basis for adopting the CCD+Addenda, as presented by testimony in the NCVHS hearing, was that NACHA is recognized as an organization that has been successful in the development of its implementation specifications and operating rules for ACH files. NACHA was perceived by testifiers to be a trusted developer and maintainer of implementation specifications and operating rules for electronic formats, although NACHA is not recognized as an SSO under HIPAA.

In addition to basing our decision on the testimony, and the February 17, 2011 NCVHS recommendation to the Secretary that resulted from the hearings and testimony, we adopt the CCD+Addenda as one of the health care EFT standards for Stage 1 Payment Initiation because many of the issues with regard to reassociation, discussed in section I.D. of this interim final rule with comment period, arise because of the multiple translations that occur as the health care EFT travels from the health plan, through the ACH Network, to the health care provider. By adopting the CCD+Addenda as one of the health care EFT standards, we are adopting the same electronic format for Stage 1 Payment Initiation as is used in Stage 2 Transfer of Funds between banks, thus eliminating one translation/reformatting of the data wherein the TRN segment might be omitted or transmitted erroneously. By transmitting the payment/payment information in a CCD+Addenda to its financial institution, a health plan will have more assurance that the Addenda Record holding the TRN Segment will not be

[30] ''How the Payment and Remittance Advice Process Works in Healthcare,'' presented to National Committee on Vital and Health Statistics at the hearing on ''Administrative Simplification under the Patient Protection and Affordable Care Act: Standards and Operating Rules for Electronic Funds Transfer (EFT) and Remittances Advice(RA), Presenter: Stuart Hanson, Fifth Third Bank, December 3, 2010, *http://hhs.granicus.com/MediaPlayer.php?publish_id=11*.

[31] Co-chair Walter Suarez, NCVHS Subcommittee on Standards, Administrative Simplification under the Patient Protection and Affordable Care Act Standards and Operating Rules for Electronic Funds Transfer (EFT) and Remittance Advice (RA), December 3, 2010, hour 5:05:30 in audio recording: *http://hhs.granicus.com/MediaPlayer.php?publish_id=11*.

altered or omitted by the financial institution before it arrives at the health care provider's financial institution.

C. Impacted Entities

The health care EFT standards are expected to decrease BIR costs; therefore, the segments of the health care industry, non-health care industry, and society that will be affected by the implementation of the standards include the following:

- Health Care Providers:
  - ++ Offices of Physicians
  - ++ Hospitals
  - ++ Nursing Homes and Residential Care facilities
  - ++ Dentists
  - ++ Suppliers of Durable Medical Equipment
  - ++ Pharmacies
  - ++ Other Providers (home health agencies, dialysis facilities, etc.)
- Health Plans
  - ++ Commercial health plans
  - ++ Government health plans
- Financial institutions
- Clearinghouses and Vendors
- Patients
- Environment

All HIPAA covered entities would be affected by the standards adopted in this interim final rule with comment period. HIPAA covered entities include all health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with a transaction for which the Secretary has adopted a standard.

Table 9 outlines the number of entities that may be impacted by the health care EFT standards, along with the sources of those data.

TABLE 9—TYPE AND NUMBER OF AFFECTED ENTITIES

Type	Number	Source
Health Care Providers—Offices of Physicians (includes offices of mental health specialists).	234,222	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf* (based on the AMA statistics).
Health Care Providers—Hospitals	5,764	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf*.
Health Care Providers—Nursing and Residential Care Facilities not associated with a hospital.	66,464	The number of providers was obtained from the 2007 Economic Census Data—Health Care and Social Assistance (sector 62) using the number of establishments: *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0762A1&-geo_id=01000US&-dataitem=** and *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-_skip=100&-ds_name=EC0762SLLS1&-NAICS2007=62&-_lang=en*. —NAICS code 623: Nursing Homes & Residential Care Facilities n = 76,395 × 87 percent (percent of nursing and residential care facilities not associated with a hospital) = 66,464.
Other Health Care Providers—Offices of dentists, chiropractors, optometrists, mental health practitioners, speech and physical therapists, podiatrists, outpatient care centers, medical and diagnostic laboratories, home health care services, and other ambulatory health care services, resale of health care and social assistance merchandise (durable medical equipment).	384,192	The number of providers was obtained from the 2007 Economic Census Data—Health Care and Social Assistance (sector 62) using the number of establishments: *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0762A1&-geo_id=01000US&-dataitem=** and *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-_skip=100&-ds_name=EC0762SLLS1&-NAICS2007=62&-_lang=en*. —NAICS code 621: All ambulatory health care services (excluding offices of physicians) = 313,339 (547,561 total − 234,222 offices of physicians). —NAICS code 62–39600(product code): Durable medical equipment = 70,853.
Health Care Providers—Independent Pharmacies	18,000	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8–19296.pdf*.
Health Care Providers—Pharmacy chains	200	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf.*
Health Plans—Commercial	1,827	Impacted commercial health plans are health insurance issuers; that is, insurance companies, services, or organizations, including HMOs, that are required to be licensed to engage in the business of insurance in a State. Includes companies offering Medicaid managed care. This number represents the most recent number as referenced in ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment, 2011 **Federal Register** (Vol. 76), July, 2011,'' from *www.healthcare.gov.*
Health Plans—Government	60	Represents the 56 Medicaid programs, Medicare, the Veteran's Administration (VHA), Indian Health Service (IHS), and TRICARE.

TABLE 9—TYPE AND NUMBER OF AFFECTED ENTITIES—Continued

Type	Number	Source
Health Plans—All	1,887	Insurance issuers (n = 1,827) + Government agencies (N = 60).
Clearinghouses and Vendors	162	Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards; Proposed Rule *http://edocket.access.gpo.gov/2008/pdf/E8-19296.pdf*, based on a study by Gartner.
Third Party Administrators	750	Summary of Benefits and Coverage and the Uniform Glossary; Notice of Proposed Rulemaking *http://www.gpo.gov/fdsys/pkg/FR-2011-08-22/pdf/2011-21193.pdf*.
Financial Institutions that can transmit EFT through ACH Network.	15,000	2010 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network, National Automated Clearing House Association, 2010.

D. Scope and Methodology of the Regulatory Impact Analysis

This impact analysis analyzes the costs and benefits to be realized by implementation of the ACH CCD+Addenda for the health care EFT Stage 1 Payment Initiation and the ASC X12 835 TRN Segment for the data content for the Addenda Record. It does not analyze the costs and benefits of the other provisions/changes that are made in this interim final rule with comment period. For instance, we do not provide an analysis of the cost or benefit of amending the definition of the health care payment and remittance advice transaction title or definition. While these amendments may have a positive impact in terms of clarifying policy, we do not believe that there are any costs or quantitative benefits directly associated with such provisions/changes.

While we assume that adoption of the health care EFT standards will impact a broad range of health care providers, as illustrated in Table 9, we will only be examining the costs and benefits of the health care EFT on two types of providers: hospitals and physician practices. We will not analyze the impact to pharmacies, nursing and residential care facilities, dentists, or suppliers of durable medical equipment.

There are two reasons for narrowing the scope of this analysis to only two categories of health care providers; we: (1) Have very little data on the adoption rate or usage of EFT among pharmacies, dentists, suppliers of durable medical equipment, nursing homes, and residential care facilities. The lack of data for these types of health care providers has been noted in other studies on administrative simplification; [32] and (2) assume that the greatest benefits will be gained by hospitals and physician practices as they receive the majority of health care claim payments. For this reason, our estimates of savings to health care providers is conservative. We welcome comments from industry and the public as to our assumptions.

We include health care clearinghouses and vendors as impacted entities in Table 9. However, we did not calculate costs and benefits in our impact analysis for these entities, although they are entities that may be required to make the most software and system changes in order to transmit the health care EFT to financial institutions on behalf of health plans. We did not calculate costs and benefits to health care clearinghouses and vendors in this cost analysis because we assume that any associated costs and benefits will be passed on to the health plans, and will be included in the costs and benefits we apply to health plans.

We include financial institutions as impacted entities. The number of financial institutions reflected in Table 9 are the number of NACHA member financial institutions, that is, the number of financial institutions that can transmit EFT through the ACH Network. We calculated the costs to financial institutions of this interim final rule with comment period based on the fee that financial institutions are assessed by NACHA for transmitting a single EFT and the estimated increase in EFT attributable to the implementation of the health care EFT standards. We calculated that, between 2013 and 2023, the sum cost to all financial institutions would be less than $4,000 dollars. Because of the negligible negative impact to financial institutions, we have not included the costs to financial institutions in our impact analysis. While we also assume that the increase in health care EFT will have benefits to financial institutions, we have not calculated those benefits in this impact analysis. The focus of this interim final rule with comment period is on the benefits to the health care industry.

Although we acknowledge the impact to ERISA (Employee Retirement Income Security Act) and non-Federal government plans, we did not include the costs or benefits of such ''health plans''—or other employers who might be defined as ''health plans''—in our analysis due to the lack of data with regard to these types of health plans. Only a very small percentage of employers with self-insured health plans conduct their own health care transactions. The majority employ third party administrators (TPAs). For our analysis, we use the number of TPAs (750) estimated in the ''Summary of Benefits and Coverage and the Uniform Glossary; Notice of Proposed Rule Making,'' published in the August 22, 2011 **Federal Register**. Self-funded and non-Federal government health plans meet the definition of covered entities under HIPAA, while TPAs, in general, do not. However, TPAs employed by self-funded and non-federal government health plans will ultimately be the party that implements the health care EFT standards. Ostensibly, these TPAs will pass on their costs and benefits to the self-funded and non-federal government health plans that they serve. Therefore, we will estimate the costs and benefits to TPAs in this analysis, and assume that TPAs will be impacted similarly to the 1,827 commercial health insurance issuers indicated in Table 9. In this RIA, we will not separate the analysis of the costs and benefits of TPAs and commercial health insurers, and, hereinafter, we will refer to both collectively as ''commercial health plans'' for purposes of this analysis.

We use the total number of health insurance issuers as the number of commercial health plans that will be affected by this interim final rule with

[32] Kahn, James, ''Excess Billing and Insurance-Related Administrative Costs,'' in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Yong, P.L., Saunders, R.S., & Olsen, L.A., The National Academies Press: 2010.

comment period, and will use this number—plus the number of TPAs—in our impact analysis. A health insurance issuer is an insurance company, insurance service, or insurance organization, including an HMO, that is required to be licensed to engage in the business of insurance in a State, and that is subject to State law that regulates insurance. While the category of ''health insurance issuers'' represents a larger number of health plans than those included in the NAICs codes for ''Direct Health and Medical Insurance Carriers'' (897 firms) we believe the category of health insurance issuers is a more accurate representation of companies conducting HIPAA transactions.

We did not analyze the costs and benefits of the health care EFT standards on Medicare, as our research has demonstrated that there will be no substantive impact to this government health plan. Medicare already requires that their contracted payers use the CCD+Addenda as the Stage 1 Payment Initiation. As well, Medicare requires that all health care providers accept and enroll in EFT when they enroll as a participating provider in the Medicare program in order to receive payments.[33] Therefore, health care providers who receive Medicare payments for health care claims are already benefiting from Medicare's use of the CCD+Addenda. Because of existing policies, Medicare has high health care provider and health plan usage rates of EFT.

For illustrative purposes, we will analyze the impact to Medicaid and other government health plans separately from commercial health plans, although the costs and benefits of the government health plans other than Medicare will be similar to those of the commercial health plans. Companies that provide Medicaid managed care plans are included in the category of commercial health plans.

We estimate that, because of the time savings that will be quantified in the analysis of benefits, patients will benefit downstream from a health care delivery system that spends less time on administrative tasks. While we will detail this benefit to patients, we will not attempt to quantify it in monetary terms. Society at large will also be further impacted by the beneficial aspects the use of EFT will have on the environment, and we will quantify those benefits.

[33] 42 CFR parts 405, 424, and 498, ''Medicare Program; Appeals of CMS or CMS Contractor Determinations When a Provider or Supplier Fails to Meet the Requirements for Medicare Billing Privileges: Final rule,'' published in **Federal Register** June 27, 2008.

Table 10 summarizes the sectors that will be analyzed in the impact analysis.

TABLE 10—SECTORS THAT WILL BE ANALYZED IN IMPACT ANALYSIS

Commercial Health Plans (includes TPAs and health insurance issuers)
Government Health Plans (Medicaid, VHA, TRICARE, IHS)
Physician Practices (includes offices of mental health specialists)
Hospitals
Health care patients
Environment

In general, the high and low range approach used in this impact analysis illustrates both the range of probable outcomes, based on our analysis, as well as the uncertainty germane to a mandated application of a standard on an industry with highly complex business needs and processes.

E. Costs

1. Costs for Health Plans (Health Insurance Issuers and TPAs)

We know from the December 2010 NCVHS testimony that some commercial health plans are currently using the CCD+Addenda in the Stage 1 Payment Initiation, and that they are already inputting the TRN Segment in the Addenda Record. For lack of other data, we will assume that 85 percent of the estimated 2,637 (or approximately 2,242) commercial health plans do not use the CCD+Addenda or do not input the TRN Segment in the Addenda Record.

For the commercial health plans that do not use the CCD+Addenda or do not use it according to the implementation specifications detailed in this interim final rule with comment period, there will be system and business process changes required in order to originate the CCD+Addenda with a TRN Segment in the Addenda Record.

Creating a CCD+Addenda and inputting or translating data into a CCD+Addenda is a comparatively simple and inexpensive technical process. A health plan that does not currently use the CCD+Addenda for the Stage 1 Payment Initiation transmits the data in some other form—flat file, an ASC X12 TR3 820, or a proprietary format. Translating the data into a CCD+Addenda can be done with commercial off-the-shelf (COTS) software for personal use that can be purchased for as little as $200, and set up in less than 15 minutes. However, it is more complicated and therefore more expensive to coordinate the treasury/accounts payable systems and processes (which would transmit the CCD+Addenda) with the claims systems and processes (which would transmit the health care remittance advice) in order for a health plan to assure duplicate TRN Segments are included in both the health care EFT and ERA. As noted previously, duplicate TRN Segments in the Addenda Record of the CCD+Addenda and in the ERA are essential to allowing automated reassociation on the health care provider side.

We have estimated that it will cost health plans, on average, $4,000 to $6,000 to implement the health care EFT standards. This is a one-time cost to health plans to install COTS software or amend systems, change processes, train staff, and/or communicate/contract for required implementation specifications for the CCD+Addenda (Table 11). The low range of costs was derived by considering the cost of high end, commercially available software that can originate a CCD+Addenda and can be integrated into most corporate accounts-payable systems. The high range of costs takes into consideration the possible difficulties associated with coordinating the health plan's payment or treasury systems with the claims processing systems so that the TRN Segment is duplicated in both the ERA and the health care EFT. It is possible that some health plans may require customization of the software.

There may be a number of commercial health plans that would have costs greater than the high range of costs we have estimated; for example, commercial health plans that currently send Stage 1 Payment Initiation in a proprietary format. As well, we assume that there are as many commercial health plans that will have minimal to no costs; for example, health plans that must simply update their vendor contracts to accommodate this change without any additional operational costs.

We estimate the maintenance, update or subscriber fees to be $2,000 to $3,000 annually for the 2 years after the first year of implementation. Subscriber fees are often assessed by software vendors that maintain and update the COTS software on the part of the health plan industry. From our research, we could not find any subscriber or update fees that were more than $500 a year, but we have estimated much higher maintenance and subscriber costs in order to account for costs that may be associated with adjustments in software or a health plan's business processes in the first few years of the standards' implementation.

Although we assume health plans will start to transition to the health care EFT

standards before the formal implementation date of January 1, 2014, for simplicity we have included all one-time implementation costs in the year 2014. Subscriber and maintenance costs will occur in 2015 and 2016. See Table 11.

TABLE 11—COST TO COMMERCIAL HEALTH PLANS OF IMPLEMENTING THE HEALTH CARE EFT STANDARDS *

Year	LOW cost to implementing health care EFT standards	HIGH cost to implementing health care EFT standards	Number of health plans that will have to make changes to implement the health care EFT standards (85% of 1,827 health insurance issuers + 750 TPAs)	LOW annual cost (in millions)	HIGH annual cost (in millions)
2014	$4,000	$6,000	2,242	$9.2	$13.8
2015	2,000	3,000	2,242	4.6	6.9
2016	2,000	3,000	2,242	4.6	6.9
Total (in millions)	.....	.....	.....	18.3	27.5

* Based on 2010 dollars.

For Medicaid, CHIP, and IHS, we have used similar cost factors with an identical range. Medicaid is actually 56 different programs, each of which administers a number of health plans, and includes more than 600 managed care plans.[34] We have included the Medicaid managed care plans in the commercial health plans category, the costs of which were previously calculated. For purposes of this cost estimate, we have counted each of the 56 Medicaid programs as an individual health plan.

As was the case with commercial health plans, we are aware that certain State Medicaid programs use the health care EFT standards already. However, it is difficult to obtain the exact number of programs that use it. Therefore, we have made the same assumption we made for commercial health plans: We estimate 85 percent of Medicaid, CHIP, and IHS health plans will need to make software and/or system changes in order to implement the health care EFT standards (see Table 12).

TABLE 12—COST TO MEDICAID, CHIP, AND INDIAN HEALTH SERVICES *

Year	LOW cost to implementing health care EFT standards	HIGH cost to implementing health care EFT standards	Number of health plans that will have to make changes to implement the health care EFT standards (85% of 60)	LOW annual cost (in millions)	HIGH annual cost (in millions)
2014	$4,000	$6,000	51	$0.20	$0.31
2015	2,000	3,000	51	0.10	0.15
2016	2,000	3,000	51	0.10	0.15
Total in millions	.....	.....	.....	0.41	0.61

* Based on 2010 dollars.

2. Cost for Physician Practices and Hospitals

We estimate there will be no direct costs to physician practices and hospitals to implement the health care EFT standards. The health care EFT standards are required for the Stage 1 Payment Initiation of the health care EFT between a health plan and its financial institution. While we assume in this impact analysis that the impact to physician practices and hospitals will be positive in terms of giving some assurance that the TRN Segment is transmitted to the health care provider's financial institution, the standards adopted herein do not affect how a provider's financial institution transmits the TRN Segment to the provider. Therefore, the health care provider is not required to change or amend systems or processes.

However, the impact analysis assumes that physician practices and hospitals will increase their usage of EFT or, in some cases, will begin accepting EFT for health care claim payments for the first time on account of the adoption of the health care EFT standards. The cost for this enrollment—less than $200 per provider over 5 years—is included in section IV. of this interim final rule with comment period. This cost of enrollment will also be reflected in the RIA summary of costs and benefits and the accounting statement.

F. Benefits

Our analysis of benefits is similar to analyses included in other recent regulations that implement administrative simplification mandates under the Affordable Care Act. The implementation of the health care EFT standards, as well as other administrative simplification regulatory initiatives such as operating rules for the HIPAA standard transactions, are expected to streamline administrative health care transactions, make the standard transactions more consistent, and decrease dependence on manual

[34] ''Medicaid Managed Care Trends,'' Medicaid Managed Care Enrollment Report, Centers for Medicare and Medicaid Services, *http://www.cms.gov/MedicaidDataSourcesGenInfo/downloads/09Trends.pdf.*

intervention in the transmission of health care and health care payment information. These improvements, in turn, will drive more physician practices, hospitals and health plans to utilize electronic transactions in their operations. Each move from a non-electronic, manual exchange of information to an electronic transaction brings with it material savings in terms of less money spent on paper, postage, and equipment required for paper-based transactions, as well as cost avoidance in terms of time savings for staff.

For health plans, we expect direct savings from the transition from a paper-based payment system (for example, paper checks) to EFT. These savings are found in the amount of staff time saved, as well as material savings such postage, paper, and printing.

For physician practices and hospitals, we expect downstream savings from a decrease in the amount of time a physician practice or hospital staff spends in manually reassociating the ERA with health care EFT. Though we expect some direct savings as well in terms of paper savings, our analysis will concentrate on health care provider staff time savings.

1. Savings for Health Plans

We assume health plans will generate savings from increased usage by physician practices and hospitals of EFT for health care claim payments. As noted previously in this impact analysis, this estimated increase will be due to a number of factors; however, we will only calculate the savings derived from increased EFT usage attributable to implementation of the health care EFT standards.

As noted in section III.A.2. of this interim final rule with comment period, we estimate a 6 to 8 percent annual increase in the use of EFT from 2014 through 2018 and a 4 to 6 percent increase from 2019 through 2023 that will be attributable to implementation of the health care EFT standards. We have included these ranges in order to reflect the uncertainty inherent in making a causal claim in a complex, multifactorial environment such as the U.S. health care industry.

There have been a number of different analyses and case studies with regard to the possible savings realized when a health plan switches from paper checks to EFT for health care claim payments. A 2007 analysis by McKinsey and Company concluded that the ''system wide cost'' of using paper checks for health care claim payments was $8.00 per check.[35] This included printing and mailing the checks from the payer side, and manually reconciling and depositing the check on the health care provider side. We have not used the McKinsey's conclusion because we do not know what methodology was used and wanted to be specific about the difference between health care provider savings and health plan savings.

In another example, United Healthcare reports that it costs the company $30.7 million to pay 145 million health care claims with paper checks compared with the cost of $2.7 million to pay the same amount of claims using EFT.[36] This is a difference of about $0.19 a claim. We did not use United Healthcare's savings estimate since, apparently, it is based on single claims, and the metric we used is based on health care claim payments. A single health care claim payment from a health plan covers payment for multiple claims submitted by a provider.

For our calculations, we use data from the Financial Management Service (FMS), a bureau of the United States Department of Treasury. We use FMS data because they are the lowest estimates, and because we consider them the most valid. According to FMS, it costs the U.S. government $0.11 to issue an EFT payment compared to $1.03 to issue a check payment—a difference of $0.92 per check.[37] This estimate includes the cost of material such as postage, envelopes, and checks, but does not include labor costs. FMS processes millions of transactions, and there are economies of scale that may not be experienced by health plans. As a result, the $0.92 estimate is probably less than the amount plans will experience. Table 12 summarizes the estimated increase and savings based on the Department of Treasury's numbers.

The ''LOW'' savings (Tables 13 and 14, Column 4) are based on 4 to 6 percent percentage point annual increases in EFT usage attributable to the health care EFT standards, while the ''HIGH'' savings (Tables 13 and 14, Column 5) are based on 6 to 8 percentage point annual increases in EFT usage attributable to implementation of the health care EFT standards.

TABLE 13—SAVINGS BY MEDICAID, CHIP, AND INDIAN HEALTH SERVICE ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS *

Year	LOW number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	HIGH number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	LOW savings for health plans based on 6% (first 5 years) to 4% increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)	HIGH savings for health plans Based on 8% (first 5 years) to 6% Increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)
(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)
2013	0.00	0.0	$0.00	$0.00
2014	0.86	1.15	0.79	1.06
2015	1.12	1.49	1.03	1.37
2016	1.46	1.94	1.34	1.79
2017	1.89	2.53	1.74	2.32
2018	2.46	3.28	2.27	3.02
2019	2.13	3.20	1.96	2.95
2020	2.56	3.84	2.36	3.53

[35] ''Overhauling the US Healthcare Payment System,'' conducted by McKinsey & Company, published in *The McKinsey Quarterly,* June 2007. (*http://www.mckinseyquarterly.com/Overhauling__the__US__health__care__payment__system__2012*).

[36] ''E-Payment Cures for Healthcare,'' presentation by J.W. Troutman (PNC Healthcare), D. Lisi (United Healthcare), B.C. Mayerick (Department of Veterans Affairs), April 26, 2010, *https://admin.nacha.org/userfiles/File/Healthcare%20Resource/Epayments%20Cures%20for%20Healthcare.pdf.*

[37] *www.fms.treas.gov/eft/index.html.*

TABLE 13—SAVINGS BY MEDICAID, CHIP, AND INDIAN HEALTH SERVICE ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS *—Continued

Year	LOW number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	HIGH number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	LOW savings for health plans based on 6% (first 5 years) to 4% increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)	HIGH savings for health plans Based on 8% (first 5 years) to 6% Increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)
(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)
2021	3.07	4.61	2.83	4.24
2022	3.69	5.53	3.39	5.09
2023	4.43	6.64	4.07	6.11
Total	23.68	34.22	21.78	31.48

* Based on 2010 dollars.

TABLE 14—ESTIMATED SAVINGS BY COMMERCIAL HEALTH PLANS ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS*

Year	LOW number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	HIGH number increase in EFT transactions from previous year attributable to implementation of health care EFT standards (in millions)	LOW savings for health plans based on 6% (first 5 years) to 4% increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)	HIGH savings for health plans based on 8% (first 5 years) to 6% increase in usage attributable to health care EFT standards ($0.92 per transaction) (in millions)
(Column 1)	(Column 2)	(Column 3)	(Column 4)	(Column 5)
2013	0.00	0.0	$0.00	$0.00
2014	1.11	1.48	1.02	1.36
2015	1.44	1.93	1.33	1.77
2016	1.88	2.50	1.73	2.30
2017	2.44	3.25	2.25	2.99
2018	3.17	4.23	2.92	3.89
2019	2.75	4.12	2.53	3.79
2020	3.30	4.95	3.04	4.55
2021	3.96	5.94	3.64	5.46
2022	4.75	7.13	4.37	6.56
2023	5.70	8.55	5.25	7.87
Total	30.51	44.09	28.07	40.56

* Based on 2010 dollars.

Table 15 illustrates the total costs and savings for commercial and governmental health plans.

TABLE 15—HEALTH PLANS' LOW AND HIGH RANGE OF COSTS AND SAVINGS *

	LOW (in millions)	HIGH (in millions)
Commercial Health Plans:		
Savings	$28.07	$40.56
Costs	18.34	27.58
Medicare and VHA		
Savings	0	0
Costs	0	0
Medicaid, CHIP, and IHS health plans:		
Savings	21.78	31.48
Costs	.41	.61
TOTAL		
Savings	49.85	72.04
Costs	18.75	28.13

* Based on 2010 dollars.

2. Savings for Physician Practices and Hospitals

For physician practices and hospitals, the greater savings to be garnered is the cost avoidance that comes from a decrease in health care provider administrative staff time dedicated to BIR tasks. These might be considered ''cost avoidance,'' in contrast to direct savings, because the decrease in time needed for a staff member to manually conduct functions that can be done electronically does not necessarily mean that money is saved. Rather, it means that the staff time, previously deployed on BIR tasks, can instead be dedicated to other areas, such as customer service for an increasing number of patients.

Calculating cost avoidance is more difficult than calculating material savings, because we must draw assumptions about the business processes a health care provider uses. Nevertheless, there has been research in the area of staff time spent on the administration of health care, specifically in the area of physician practices, from which we can draw some conclusions.

As an example, the VHA did a study of cost avoidance after implementing an ''E-payment system'' in 2003 with the 1,675 health care ''payers'' from whom they collect health care claim payments. The new E-payment system implemented a number of different changes to how payers paid VHA claims, including: (1) Enabling the VHA to accept ERA (X12 835 TR3) and health care EFT, and urging health plans to transmit remittance advice and payment electronically; (2) routing the payment to a single lockbox bank; and (3) routing the health care EFT and ERA together for accounts receivable posting.[38]

Notably, in order to facilitate the reassociation of the health care EFT and ERA, the VHA required that payers use the CCD+Addenda to transmit the health care EFT with the same TRN Segment as that included in the associated ERA.

In cases where health plans transmitted both the health care EFT and the ERA electronically, the VHA found two substantial consequences resulted from the new system. There was a: (1) 71 percent reduction in the time between when a claim was submitted and when the payment was received by the VHA, from 49 days down to 14 days; and (2) 64 percent time savings for accounts receivable and related tasks by 2010. The first result is especially important when applied to small physician practices for which cash-on-hand is crucial for continuity of operations. The second consequence resulted in $9.3 million in annual cost avoidance for the VHA. In a clear example of how cost avoidance can be of benefit, the 64 percent time saving resulted in the VHA being able to handle 2.5 times the number of claims that were processed before the E-payment system was implemented in 2003 without adding additional staff.

While the VHA found a 64 percent time savings for accounts receivable and related tasks after implementation of its E-payment system, we calculate that there will be a 10 to 15 percent time savings for the health care providers to receive and post payments after implementation of the health care EFT standards. We have estimated a much lower percentage of time savings because the VHA E-payment system was much more comprehensive in its approach to automating accounts receivable process compared to the health care EFT standards adopted in this interim final rule with comment period. However, some of the VHA savings can be attributed to the fact that the VHA E-payment system required payers to use the CCD+Addenda, and we therefore estimate that time savings can likewise be directly attributed to implementation of the health care EFT standards adopted herein.

We estimate that implementation of the health care EFT standards will save a percentage of staff time for two reasons: First, as demonstrated above, there is a direct causal relationship between making payment by EFT more efficient and consistent and an increase in utilization of EFT by physician practices and hospitals. For every health care EFT a physician practice receives from a health plan, there will be time saved because staff will not have to manually open checks, fill out deposit slips and make deposits, create and update spreadsheets or other tools to track check payments, and manually file and organize the paperwork. Second, the standardization of the electronic format and implementation specifications of the Stage 1 Payment Initiation transmission will allow for some assurance that the health care provider will be able to receive a TRN Segment that matches an accompanying ERA. This will decrease staff time necessary to manually oversee the receipt of payment and manually reassociate the health care EFT with the associated ERA. This second benefit of the health care EFT standards will save time not only for health care providers that are increasing their EFT usage, but also for those that currently use EFT with some payers; that is, it will allow for automation of current EFT claim payments that may not be fully automated due to erroneous or missing TRN Segments in the EFT.

Given these two elements of cost savings in receiving and posting payments, we estimate that there will be a 10 to 15 percent savings in the time spent receiving and posting payments in a physician practice every time a physician practice or hospital enroll to receive EFTs from a health plan (in comparison to when a physician practice receives paper checks). We believe this estimate to be low, as a 15 percent savings in time might be achieved solely in terms of the time saved by not having a staff member manually transport and deposit paper checks.

We expect that the forthcoming operating rules required to be adopted for the health care EFT and remittance advice transaction will provide further cost avoidance benefits in terms of time savings.

For our calculations, data on the amount of time that is currently spent on ''payment and posting'' tasks is taken from Sakwoski, et al., 2009.[39] Sakowski found that a total of 0.67 nonclinical full time employees (FTEs) were dedicated to BIR activities per physician in a sample of California physician practices. Of those BIR tasks, 14 percent included ''payment receiving and posting'' tasks, and we estimate there will be time savings in these specific tasks upon implementation of the health care EFT standards. The 14 percent does not include follow-up on payments and the reconciliation of payments received with payments pending. Although the health care EFT standards may streamline these tasks as well, more direct savings are found in receiving and posting payments.

Based on Sakowski and 2010 statistics from the U.S. Bureau of Labor Statistics, we calculate the total time dedicated to receiving and posting payments for all physician practices and hospitals (Table 16, Column 2). The calculation for the total time dedicated to receiving and posting payments for physician practices is: [percent of time full time employee is dedicated to BIR tasks per

[38] ''E-Payment Cures for Healthcare,'' presentation, Barbara C. Mayerick, Department of Veterans Affairs, April 26, 2010, *https://admin.nacha.org/userfiles/File/Healthcare%20Resource/Epayments%20Cures%20for%20Healthcare.pdf* and ''Comments from VHA Health Care as Health Care Provider,'' testimony by Barbara Mayerick for NCVHS December 3, 2010 hearing: *http://hhs.granicus.com/MediaPlayer.php?publish_id=11.*

[39] Sakowski, J.A., Kahn, J.G., Kronick, R.G., Newman, J.M., & Luft, H.S., ''Peering into the black box: Billing and insurance activities in a medical group,'' *Health Affairs:* 28(4):w544–w554, 2009.

physician] X [total number of physicians in physician practices] X [percent of BIR time spent on ''payment and posting'']. For hospitals, we used a slightly different methodology based on the ratio of physicians to administrative staff conducting BIR tasks in physician practices.

The total time dedicated to receiving and posting payments is then multiplied by 10 percent for the LOW time savings attributable to the health care EFT standards and 15 percent for the HIGH time savings, the products of which are illustrated in Table 16 and 17, Columns 2 and 3. The 10 to 15 percent time savings occurs every time physician practices and hospitals, as a whole, moves from paper checks to EFT with one health plan. Given our assumptions of the increased use of EFT for health care claim payments, the average hospital and physician practice will begin receiving health care claim payments via EFT from 12 health plans (from whom they had previously received paper checks) between 2014 to 2023 (Table 16 and 17, Col. 5). For simplicity sake, we have projected this movement from paper checks to EFT as spread evenly over ten years, and illustrated in Table 16 and 17 that physician practices and hospitals, as a whole, make the switch with 1.2 health plans a year. We then multiplied each year's time savings by the average salary of a billing and posting clerk in physician practices (Table 16 and 17, Column 4), to arrive at the projected yearly cost savings attributable to implementation of the health care EFT standards. The range of 10 to 15 percent reflects the uncertainty inherent in the estimate of time savings. However, it should be noted that the VHA found a 64 percent time savings across *all* accounts receivable and related tasks, while our estimate reflects a time savings in ''receiving and posting payments'' only.

TABLE 16—PHYSICIAN PRACTICE SAVINGS/COST AVOIDANCE ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS

(Col. 1)	LOW time savings (in FTEs) attributable to EFT standard (10% decrease in payment and posting time spent per EFT enrollment) (Col. 2)	HIGH time savings (in FTEs) attributable to health care EFT standard (15% decrease in payment and posting time spent per EFT enrollment) (Col. 3)	Salary per FTE (baseline 2010 Bureau of Labor Statistics, plus benefits and 3% annual increase (Col. 4)	Average number of new EFT enrollment per provider (Col. 5)	Low cost avoidance of projected EFT enrollments in millions (Col. 6)	High cost avoidance of projected EFT enrollments in millions (Col. 7)
2013	0	0	48,250	0	$.00	$.00
2014	3,143	4,715	49,698	1.2	187.47	281.20
2015	2,876	4,079	51,189	1.2	176.68	250.53
2016	2,950	4,245	52,725	1.2	186.65	268.57
2017	2,975	4,269	54,306	1.2	193.89	278.18
2018	3,005	4,314	55,935	1.2	201.72	289.55
2019	3,035	4,356	57,614	1.2	209.81	301.14
2020	3,064	4,398	59,342	1.2	218.21	313.20
2021	3,094	4,441	61,122	1.2	226.92	325.70
2022	3,129	4,491	62,956	1.2	236.38	339.31
2023	3,164	4,541	64,845	1.2	246.17	353.35
Total				12	2,084	3,001

* From Sakowski, *et al.,* 2009, and Bureau of Labor Statistics.

TABLE 17—HOSPITAL SAVINGS/COST AVOIDANCE ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS

(Col. 1)	LOW time savings (in FTEs) attributable to EFT standard (10% decrease in payment and posting time spent per EFT enrollment) (Col. 2)	HIGH time savings (in FTEs) attributable to health care EFT standard (15% decrease in payment and posting time spent per EFT enrollment) (Col. 3)	Salary per FTE (baseline 2010 Bureau of Labor Statistics, plus benefits and 3% annual increase (Col. 4)	Average number of new EFT enrollment per provider (Col. 5)	Low cost avoidance of projected EFT enrollments in millions (Col. 6)	High cost avoidance of projected EFT enrollments in millions (Col. 7)
2013	0	0	$48,250	0	$.00	$.00
2014	1,557	2,335	49,698	1.2	92.85	139.28
2015	1,425	2,020	51,189	1.2	87.51	124.09
2016	1,461	2,102	52,725	1.2	92.45	133.02
2017	1,474	2,114	54,306	1.2	96.03	137.78
2018	1,488	2,137	55,935	1.2	99.91	143.41
2019	1,503	2,157	57,614	1.2	103.92	149.15
2020	1,518	2,178	59,342	1.2	108.08	155.12

TABLE 17—HOSPITAL SAVINGS/COST AVOIDANCE ATTRIBUTABLE TO IMPLEMENTATION OF HEALTH CARE EFT STANDARDS—Continued

(Col. 1)	LOW time savings (in FTEs) attributable to EFT standard (10% decrease in payment and posting time spent per EFT enrollment) (Col. 2)	HIGH time savings (in FTEs) attributable to health care EFT standard (15% decrease in payment and posting time spent per EFT enrollment) (Col. 3)	Salary per FTE (baseline 2010 Bureau of Labor Statistics, plus benefits and 3% annual increase (Col. 4)	Average number of new EFT enrollment per provider (Col. 5)	Low cost avoidance of projected EFT enrollments in millions (Col. 6)	High cost avoidance of projected EFT enrollments in millions (Col. 7)
2021	1,532	2,199	61,122	1.2	112.39	161.32
2022	1,550	2,225	62,956	1.2	117.08	168.06
2023	1,567	2,249	64,845	1.2	121.92	175.01
Total	.....	.....	.....	.....	1,032	1,486

We note a number of assumptions built into the calculations illustrated in Tables 16 and 17:

• The number of physicians in the United States will grow considerably between 2014 and 2023. Our estimates are based on projections of physician supply and demand by the Association of American Medical Colleges.[40] In spite of the estimated time savings realized by implementation of the health care EFT standards, overall time spent on payment and posting tasks for physicians will remain constant or even increase due to the increase in physicians (which, in turn, is due to an increase in expected claims over the next twenty years).

• The number of FTEs who spend time on BIR tasks per physician remains constant between 2014 and 2023. While we expect that efficiencies will be developed through administrative simplification and other federal, state and industry initiatives, the administrative complexity involved in the projected increase in the number of claims may counter balance any decreases in the ratio of administrative staff to clinical staff.

• The salary of a billing and posting clerk FTE increases at a rate of 3% a year.

We project the health care EFT standard and other statutory and regulatory requirements will save staff time by making it possible for health care providers to automate more and more of their BIR tasks.

3. Benefits to Patients

A 2002 study concluded that there is an inverse relationship between administrative complexity and quality of care.[41] The study analyzed data from the National Committee for Quality Assurance's (NCQA) Quality Compass 1997, 1998, and 2000. In essence, the study compared administrative costs to quality indicators and found that ''Higher administrative costs were associated with worse quality for virtually every quality measure in each of the four years * * * The correlation coefficients were remarkably stable from year to year, suggesting that high administrative costs did not facilitate quality improvement over time.'' [42]

The study did not describe reasons for this correlation, beyond commentary on excess costs in the U.S. health care industry in general, nor will we attempt to draw any quantifiable patient benefits in our impact analysis. However, as we have illustrated, the average physician practice and hospital is spending an increasing amount of time (60 hours of staff time per week per physician interacting with health plans [43]) and money (10 to 14 percent of physician practice revenue) on BIR tasks. We can conclude that, overall, the time and money spent on BIR tasks are increasingly encroaching on the time and money spent on delivering quality health care.

4. Benefits to the Environment

As an electronic, paperless exchange, the benefits of the use of EFT reverberate through our environment. Table 16 illustrates some of the environmental benefits to using EFT. The calculator was developed under a NACHA initiative entitled ''Pay It Green'' to persuade consumers to pay bills online and persuade companies to deposit salaries through EFT Direct Deposit based on its positive environmental impacts.[44] The data entered into the calculator are our estimated number of increased EFT, year after year, attributable to implementation of the health care EFT standards. Table 18 illustrates the environmental savings or cost avoidance that is gained by an estimated increase in EFT usage, attributable to the implementation of the health care EFT standards, from 2014 to 2023.

[40] ''Physician Shortages to Worsen Without Increases in Residency Training,'' Association of American Medical Colleges fact sheet at *https://www.aamc.org/download/150584/data/physician_shortages_factsheet.pdf,* from AAMC Center for Workforce Studies, June 2010 Analysis.

[41] Himmelstein, D. U. and Woolhandler, S., ''Taking care of Business: HMOs that spend more on administration deliver lower-quality care,'' International Journal of Health Services, Volume 32, Number 4, 2002.

[42] Himmelstein, *et al.*

[43] Casalino, *et al.*

[44] *http://www.payitgreen.org/business/dirDepCalculator.aspx.*

TABLE 18—BENEFITS TO THE ENVIRONMENT BASED ON INCREASED USAGE OF EFT ATTRIBUTABLE TO HEALTH CARE EFT STANDARDS *

Number of payments that move from paper check to EFT attributable to health care EFT standards (in millions) (LOW estimate)	Pounds of paper saved **	Pounds of greenhouse gas avoided	Gallons of gasoline saved ***	Gallons of wastewater prevented from discharging into rivers and lakes	Pounds of waste prevented
50.94	794,000	2,259,000	292,000	7,566,000	905,000

* Taken from calculations derived from NACHA ''Pay It Green'' Organization, ''Direct Deposit Financial Paper Footprint Calculator (*http://www.payitgreen.org/business/dirDepCalculator.aspx*).

** Data on the environmental impact of producing paper for checks was taken from Environmental Defense Fund's Paper Calculator (available at *www.edf.org/papercalculator/*).

*** Data on the greenhouse gas impact of printing and transporting paper checks and bills was provided by the ''Life and Travels of a Paper Check'' study done for NACHA. Additional greenhouse gas data related to transportation was calculated using the World Resources Institute's Mobile Combustion Calculator (available at *www.ghgprotocol.org*).

G. Summary

Although we have calculated savings as a result of usage of the health care EFT standards, our calculations appear significantly lower than analogous calculations in other studies and reports.

For example, the UnitedHealth Group reported in a 2009 working paper that $108 billion could be saved industry wide over the course of ten years if health care claim payments were required to be paid via EFT and remittance advice was required to be transmitted electronically.[45] The UnitedHealth Group appeared to base the savings solely on industry-wide adoption of the EFT and the ERA, and not on any associated operating rules or consistent application of standard implementation specifications.

The Healthcare Efficiency Index National Progress Report on Healthcare Efficiency, sponsored by Emdeon, a health care clearinghouse, estimates an annual savings of $11 billion if the industry were to use EFT for 100 percent of health care claim payments.[46] Our savings analysis is based on use of EFT for approximately 84 percent of health care claim payments by 2023, but our savings are significantly less than the Healthcare Efficiency reported.

In one recent study, the estimated total BIR costs to the health care industry were estimated at $361 billion in 2009. From a survey of other studies, the study concludes that $65 to $70 billion a year is ''excess'' cost to physicians. ''Excess'' was defined as spending above a benchmark comparison with Canadian physicians.[47]

None of these studies specifically examined the impact of the health care EFT standards adopted in this interim final rule with comment period, and the health care EFT standards will only decrease BIR costs by a small percent of total ''excess.'' However, the savings estimated in these studies reflect the extent to which the health care EFT standards, and all subsequent standards adopted under section 1104 of the ACA, may impact U.S. healthcare.

Costs and savings of implementing the health care EFT standards for the health care industry are summarized in Table 19, and range of return on investment is illustrated in Table 20.

TABLE 19—TOTAL COSTS AND SAVINGS OF IMPLEMENTING THE HEALTH CARE EFT STANDARDS FOR HEALTH CARE INDUSTRY

Year	LOW estimate total costs (in millions) *	HIGH estimate total costs (in millions) *	LOW estimate, total savings (in millions)	HIGH estimate total savings (in millions)
Cumulative total over 10 years	$28	$38	$3,166	$4559

* Includes cost of provider enrollment in EFT described in COI.

TABLE 20—RANGE OF RETURN ON INVESTMENT

	LOW (LOW savings—HIGH cost) (in millions)	HIGH (HIGH savings—LOW cost) (in millions)
Range of Return on Investment: Entire Industry	$3,128	$4,531

[45] ''The Health Care Cost Containment—How Technology Can Cut Red Tape and Simplify Health Care Administration,'' Unitedhealth Center for Health Reform & Modernization, Working Paper 2, June 2009, *http://www.unitedhealthgroup.com/hrm/UNH_Working Paper2.pdf.*

[46] ''The Health Care Cost Containment—How Technology Can Cut Red Tape and Simplify Health Care Administration,'' UnitedHealth Center for Health Reform & Modernization, Working Paper 2, June 2009, *http://www.unitedhealthgroup.com/hrm/UNH_Working Paper2.pdf.*

[47] Kahn, James, ''Excess Billing and Insurance-Related Administrative Costs,'' in *The Healthcare Imperative; Lowering Costs and Improving Outcomes: Workshop Series Summary,* edited by Yong, P.L., Saunders, R. S., & Olsen, L. A.

H. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4/*), in Table 21 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this interim final rule. This table provides our best estimate of the costs and benefits associated with the implementation of the health care EFT standards adopted herein.

TABLE 21—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2013 TO FY 2023

[In millions]

Category	Primary estimate (millions)	Minimum estimate (millions)	Maximum estimate (millions)	Source citation (RIA, preamble, etc.)
BENEFITS				
Annualized Monetized benefits:				
7% Discount	Not estimated	$271.5	$391.3	RIA.
3% Discount	Not estimated	280.8	404.5	RIA.
Qualitative (un-quantified) benefits	Wider use of EFT due to adoption of standards; ability to re-associate EFT and RA; increased cost avoidance due to decrease in manual requirements.			
Benefits generated from plans to physician practices and hospitals. It is probable that other providers will experience proportional benefits.				
COSTS				
Annualized Monetized costs:				
7% Discount	Not Estimated	3.0	4.1	RIA and COI.
3% Discount	Not Estimated	2.8	3.7	RIA and COI.
Qualitative (un-quantified) costs	None	None	None	
Physician practices and hospitals will have costs associated with enrollment in EFT, if they choose to enroll. Other categories of providers may have similar costs. Health plans will pay costs to software vendors, programming and IT staff/contractors, and clearinghouses.				
TRANSFERS				
Annualized monetized transfers: ''on budget''	N/A	N/A	N/A	
From whom to whom?	N/A	N/A	N/A	
Annualized monetized transfers: ''off-budget''	N/A	N/A	N/A	

List of Subjects

45 CFR Part 160

Administrative practice and procedure, Computer technology, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 162

Administrative practice and procedures, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in this preamble, the Department of Health and Human Services amends 45 CFR subchapter C to read as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 160 continues to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d–1320d–8, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)), 5 U.S.C. 552; secs. 13400 and 13402, Pub. L. 111–5, 123 Stat. 258–263, and sec. 1104 of Pub. L. 111–148, 124 Stat. 146–154.

Subpart A—General Provisions

■ 2. Amend § 160.103 as follows:

■ A. Redesignating paragraph (11) to the definition of ''transaction'' as paragraph (12).

■ B. Adding a new paragraph (11) to the definition of ''transaction''.

The addition read as follows:

§ 160.103 Definitions.

* * * * *

Transaction * * *

(11) Health care electronic funds transfers (EFT) and remittance advice.

* * * * *

PART 162—ADMINISTRATIVE REQUIREMENTS

■ 3. The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1180 of the Social Security Act (42 U.S.C. 1320d–1320d–9), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, sec. 105 of Pub. L. 110–233, 122 Stat. 881–922, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note), and secs. 1104 and 10109 of Pub. L.111–148, 124 Stat. 146–154 and 915–917.

Subpart A—General Provisions

■ 4. Amend § 162.103 by adding the definition of ''Stage 1 payment initiation'' to read as follows:

§ 162.103 Definitions.

* * * * *

Stage 1 payment initiation means a health plan's order, instruction or authorization to its financial institution to make a health care claims payment using an electronic funds transfer (EFT) through the ACH Network.

* * * * *

Subpart I—General Provisions for Transactions

■ 5. Amend § 162.920 by adding a new paragraph (d) to read as follows:

§ 162.920 Availability of implementation specifications and operating rules.

* * * * *

(d) The National Automated Clearing House Association (NACHA), The Electronic Payments Association, 1350 Sunrise Valle Drive, Suite 100, Herndon, Virginia 20171 (Phone) (703) 561–1100; (Fax) (703) 713–1641; Email: *info@nacha.org;* and Internet at *http://www.nacha.org.* The implementation specifications are as follows:

(1) 2011 NACHA Operating Rules & Guidelines, A Complete Guide to the Rules Governing the ACH Network, NACHA Operating Rules, Appendix One: ACH File Exchange Specifications (Operating Rule 59) as referenced in § 162.1602.

(2) 2011 NACHA Operating Rules & Guidelines, A Complete Guide to the Rules Governing the ACH Network, NACHA Operating Rules Appendix Three: ACH Record Format Specifications (Operating Rule 78), Part 3.1, Subpart 3.1.8 Sequence of Records for CCD Entries as referenced in § 162.1602.

■ 6. Revise the heading of Subpart P to read as follows:

Subpart P—Health Care Electronic Funds Transfers (EFT) and Remittance Advice

§ 162.1601 [Amended]

■ 7. In § 162.1601, paragraph (a) introductory text is amended by removing the phrase ''provider's financial institution'' and adding the term ''provider'' in its place.

■ 8. Section 162.1602 is revised to read as follows:

§ 162.1602 Standards for health care electronic funds transfers (EFT) and remittance advice transaction.

The Secretary adopts the following standards:

(a) For the period from October 16, 2003 through March 16, 2009: Health care claims and remittance advice. The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091, and Addenda to Health Care Claim Payment/Advice, Version 4010, October 2002, Washington Publishing Company, 004010X091A1. (Incorporated by reference in § 162.920.)

(b) For the period from March 17, 2009 through December 31, 2011, both of the following standards:

(1) The standard identified in paragraph (a) of this section.

(2) The ASC X12 Standards for Electronic Data Interchange Technical Report Type 3—Health Care Claim Payment/Advice (835), April 2006, ASC X12N/005010X221. (Incorporated by reference in § 162.920.)

(c) For the period from January 1, 2012 through December 31, 2013, the standard identified in paragraph (b)(2) of this section.

(d) For the period on and after January 1, 2014, the following standards:

(1) Except when transmissions as described in § 162.1601(a) and (b) are contained within the same transmission, for Stage 1 Payment Initiation transmissions described in § 162.1601(a), all of the following standards:

(i) The National Automated Clearing House Association (NACHA) Corporate Credit or Deposit Entry with Addenda Record (CCD+) implementation specifications as contained in the 2011 NACHA Operating Rules & Guidelines, A Complete Guide to the Rules Governing the ACH Network as follows (incorporated by reference in § 162.920)—

(A) NACHA Operating Rules, Appendix One: ACH File Exchange Specifications; and

(B) NACHA Operating Rules, Appendix Three: ACH Record Format Specifications, Subpart 3.1.8 Sequence of Records for CCD Entries.

(ii) For the CCD Addenda Record (''7''), field 3, of the standard identified in 1602(d)(1)(i), the Accredited Standards Committee (ASC) X12 Standards for Electronic Data Interchange Technical Report Type 3, ''Health Care Claim Payment/Advice (835), April 2006: Section 2.4: 835 Segment Detail: ''TRN Reassociation Trace Number,'' Washington Publishing Company, 005010X221 (Incorporated by reference in § 162.920).

(2) For transmissions described in § 162.1601(b), including when transmissions as described in § 162.1601(a) and (b) are contained within the same transmission, the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, ''Health Care Claim Payment/Advice (835), April 2006, ASC X12N/005010X221. (Incorporated by reference in § 162.920).

Dated: November 16, 2011.

Donald M. Berwick,

Administrator. Centers for Medicare & Medicaid Services.

Dated: December 28, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–132 Filed 1–5–12; 8:45 am]

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H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the ''Sergeant Matthew J. Fenton Post Office''. (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the ''M.D. Anderson Plaza'' and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the ''Sergeant Angel Mendez Post Office''. (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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